U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27640646

Date: JUL. 18, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner, an importer of Ghanaian folk art and artisanal goods, seeks to temporarily employ the Beneficiary as a sales associate and logistics chief under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. The Director further determined that the Petitioner did not demonstrate the Beneficiary was employed abroad in a managerial or executive capacity or in a position involving specializing knowledge and that he would be employed in a specialized knowledge capacity in the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. ANALYSIS

The primary issue we will address is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner identified the Beneficiary's foreign employer as '[redacted]' and stated that it is a subsidiary of this foreign entity. However, it did not complete section 1, item 10 of the L Classification Supplement to Form I-129, where asked to "describe the percentage of stock ownership and managerial company of each company that has a qualifying relationship."

In support of the petition, the Petitioner provided:

- Certificate of Registration showing that the business name '[redacted]' was registered with the Registrar of Companies in Ghana in July 2020. Neither this document nor an accompanying "business details" document identify the owner(s) of the business.
- Certificate of Incorporation for '[redacted]' showing its incorporation in Ghana in March 2022, accompanied by registered company documents showing that the Beneficiary owns 80% of the shares of this company and another Ghanaian individual owns 20% of its shares.
- Certificate of Filing and Certificate of Formation for the Petitioner, a Texas limited liability company established in March 2021, identifying B-C- as the manager of the company.

The Petitioner also provided a copy of its business plan which mentions its "proposed addition of [redacted] as a subsidiary," which contradicted the Petitioner's statement on the Form I-129 that it is a subsidiary of the foreign entity. It also submitted copies of e-mail communications exchanged between the Beneficiary and B-C- in which they discussed the proposed "merging of business" between [redacted] and the Petitioner, and the possibility of making the Beneficiary a partner in the U.S. company upon his arrival in the United States, when all "necessary paperwork" could be filed in Texas.

The Director issued a request for evidence (RFE) advising the Petitioner that the initial evidence did not corroborate its claim that it is a subsidiary of the foreign entity or that it otherwise has a qualifying relationship with the foreign entity. The Director provided a list of evidence the Petitioner could provide to document the ownership and control of both entities.

The Petitioner's response to the RFE included an unexecuted "company agreement" for the petitioning company, dated August 20, 2022, which identifies B-C- and '[redacted]' as the company's only members. An attached Exhibit A indicates that B-C- would retain a 70% ownership interest in the Petitioner and remain the designated manager and '[redacted]' would acquire 30% of the company.

A cover letter accompanying the Petitioner's February 2023 response referred to this document as a "proposed LLC agreement" between the two companies that had not yet been finalized. The Petitioner also submitted a copy of its Texas Franchise Tax Public Information Report for 2023, which lists the Beneficiary as a "General Partner" of the company and is signed by B-C- in his capacity as "owner."

The Director concluded that the evidence submitted in response to the RFE did not corroborate the Petitioner's claim that it is the subsidiary of the foreign entity or that the two entities otherwise had a qualifying relationship, as defined in the regulations at 8 C.F.R. § 214.2(l)(1)(ii), at the time of filing.

On appeal, the Petitioner asserts that it established the required qualifying relationship by a preponderance of the evidence and indicates that it is providing "additional evidence of beneficiary's company relationship with [the Petitioner]."

Upon review, the Petitioner has not established that it has a qualifying relationship with the foreign entity. Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. *See, e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Church Scientology Int'l*, 19 I&N Dec. at 595.

As noted, the Petitioner indicated that it is a subsidiary of the foreign entity. To support this claim, the Petitioner must document the foreign entity's direct or indirect ownership interest and establish that the foreign entity has the authority to control the petitioning entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). Control may be "de jure" by reason of ownership of more than 50 percent of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

Here, the Petitioner provided its certificate of formation identifying B-C- as its manager. The Petitioner also provided correspondence from the IRS which identifies B-C- as the "sole member" of the company. As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. The Petitioner did not submit this type of evidence to document its ownership.

The record does not contain evidence that the foreign entity held any ownership interest in the company at the time of filing and therefore the Petitioner did not meet its burden to establish the claimed parent-subsidiary relationship. To the limited extent that the Petitioner attempted to document its ownership, that evidence suggests that the company is wholly owned by B-C-, a U.S. citizen.

The Petitioner acknowledged that the "company agreement" submitted in response to the RFE, which would give the foreign entity a 30 percent ownership interest in the petitioning company, was only a proposed agreement that had not been executed by either party. A petitioner must establish that it is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Therefore, a proposed agreement with an unknown future date of execution is not sufficient for the purposes of establishing the requisite qualifying relationship between the two entities. Further, even if the submitted agreement had been executed as of the date of filing and accompanied by relevant documentary evidence showing that the foreign entity acquired an ownership interest in the petitioning company, the terms of the agreement do not indicate that the foreign entity would in fact control the Petitioner based on its minority ownership interest, such that the Petitioner would qualify as a subsidiary under 8 C.F.R. § 214.2(l)(1)(ii)(K).

As noted, the record reflects that B-C- had discussed with the Beneficiary a proposed "merging of business" between the U.S. and foreign entities, and the possibility of making the Beneficiary a partner in the U.S. company in the future. The record indicates that, subsequent to the filing of the petition, the Petitioner filed a Texas Franchise Tax Public Information Report for 2023, which lists the Beneficiary as a "General Partner" of the company. However, the record does not contain sufficient evidence that the Beneficiary has acquired an ownership interest in the U.S. company or explain what impact that would have on the claimed qualifying relationship. The Petitioner neither claimed nor established that the two entities have a qualifying relationship based on common ownership and control by the Beneficiary.[1]

On appeal, the Petitioner indicates that it is providing additional evidence in support of the claimed qualifying relationship. It submits a "Contract of Agreement" dated January 30, 2023, which is prepared on the foreign entity's letterhead. The agreement states that the Petitioner "will provide financial support to [redacted] in running the activities of the company." It further states that the foreign entity "is being sponsored by [the Petitioner] and would be compensated for the service it is providing in the sharing of proceeds gotten from sales." The agreement provides that the Petitioner will receive 65% of the proceeds made from sales stemming from the agreement, with the remaining 35% going to the foreign entity. This evidence does not support the Petitioner's previous claim that there is a parent-subsidiary relationship between the two entities. In addition, this contractual arrangement, which was also executed subsequent to the filing of the petition, does not address the necessary elements of common ownership and control and is insufficient to establish a qualifying relationship between the U.S. and foreign entities. *See Matter of Schick*, 13 I&N Dec. 647 (Reg'l Comm'r 1970) (finding that no qualifying relationship exists where the relationship between the

[1] The Petitioner submitted evidence of the Beneficiary's majority ownership of a Ghanaian company called '[redacted]' that was formed approximately eight months prior to the filing of the petition. The Petitioner does not claim to have a qualifying relationship with this entity, nor does it claim that the Beneficiary has been employed by this entity. Pay statements submitted for the Beneficiary to document his overseas employment indicate that he is employed by [redacted] in a sales or marketing position.

foreign and U.S. entities was "purely contractual" and not reflective of common ownership and management).

In sum, the record does not reflect that the Petitioner and the foreign entity have a qualifying relationship based on the required common ownership and control. The evidence does not establish that the foreign entity directly or indirectly owns and controls the Petitioner, nor does it show that the Petitioner directly or indirectly owns and controls the foreign entity. Therefore, the two entities are not related as parent and subsidiary as those terms are defined at 8 C.F.R. § 214.2(l)(1)(ii)(I) and (K). The record does not establish, in the alternative that the two entities are owned, directly or indirectly, by the same parent, individual, or group of individuals, and therefore they do not qualify as affiliates as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L). While it appears that the companies intend to work closely together and may plan to form a relationship based on common ownership and control in the future, it is the Petitioner's burden to establish that all eligibility requirements for this classification were satisfied at the time of filing. As the Petitioner has not met this burden, we will dismiss the appeal.

III. RESERVED ISSUES

As noted, the Director also determined that the Petitioner did not establish (1) that the Beneficiary was employed abroad in a managerial or executive capacity, or in a position involving specialized knowledge, and (2) that he would be employed in the United States in a specialized knowledge capacity. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve these two additional grounds for denial and the Petitioner's appellate arguments with respect to these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer and therefore has not demonstrated its eligibility for the requested L-1B classification. The appeal will be dismissed for the above-stated reasons.

ORDER: The appeal is dismissed.