U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27032727

Date: MAY 10, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner intends to operate as a coffee shop/restaurant. It seeks to employ the Beneficiary temporarily as general manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that: 1) it had a qualifying relationship with the Beneficiary's employer abroad at the time of filing; 2) the Beneficiary was employed abroad by a qualifying organization for at least one continuous year within the three years prior to filing the instant petition; 3) the Beneficiary's employment abroad was in a managerial or executive capacity; and 4) the Beneficiary's proposed employment would be in a managerial or executive capacity within one year of the petition's approval. 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 because the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's employer abroad at the time this petition was filed.[2] The Director acknowledged that the Petitioner submitted evidence to show that it is a subsidiary in a parent-subsidiary relationship with a joint venture between the Beneficiary's foreign employer and another

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

[2] 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").

foreign entity.[3] However, the Director pointed out that no capital contributions were made by the joint venture participates as of July 2022, when this petition was filed. Likewise, the Director noted that although the Petitioner provided its operating agreement in response to a request for evidence, the agreement was executed in November 2022, and thus it too came into existence only after this petition was filed. In sum, the Director concluded that because the Petitioner's operating agreement had not been executed nor any fund contributions made as of July 2022, the record lacked sufficient evidence showing that a qualifying relationship existed between the Petitioner and the Beneficiary's foreign employer as of the date this petition was filed.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining grounds for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

On appeal, the Petitioner argues that the Director erred by focusing on the operating agreement's date of execution and further contends that wire transfer notices of fund contributions "only show that a previously agreed-upon arrangement was put in effect through them." The Petitioner instead focuses on its articles of organization,[4] arguing that this document names "the shareholders' owners/directors as [the Petitioner]'s main manager." However, the Petitioner's reliance on the articles of organization is incorrect, as this document establishes the Petitioner's formation and management rather than its ownership. Although Article IV of the articles of organization lists two individuals as the "person(s) authorized to manage" the Petitioner, it is silent on the issue of ownership.[5] As previously noted, evidence pertaining to the Petitioner's ownership did not exist at the time of filing. The Director

[3] A parent-subsidiary relationship can be formed through a 50-50 joint venture where the parent owns 50% of a joint venture and has equal control and veto power over the subsidiary entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K) (defining the term "subsidiary"). The Petitioner listed [redacted] the Beneficiary's foreign employer, and [redacted] as the two entities engaged in the joint venture whereby each entity owns 50% of the Petitioner.

[4] The Petitioner refers to the formation document as the "Articles of Incorporation." However, the record shows that the Petitioner, in fact, filed the Articles of Organization, which is consistent when the formed is a limited liability company, as in the instant matter.

[5] 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. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595. Further, the regulations specifically allow a director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, a director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership.

correctly cited to regulatory provisions requiring the Petitioner to demonstrate that it satisfied all eligibility criteria at the time of filing based on the facts and circumstances that existed at that time. *See* 8 C.F.R. § 103.2(b)(1) and (12).

In this matter, the evidence submitted shows that no money was provided in exchange for ownership of the Petitioner, nor had an operating agreement been executed as of the date this petition was filed. As such, the Petitioner did not establish that it met all eligibility requirements *at the time of filing*. *Id.* Accordingly, the Petitioner is not eligible for the immigration benefit sought in this matter.

ORDER: The appeal is dismissed.