U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31892730

Date: JUL. 12, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a cell phone and accessories retailer, seeks to permanently employ the Beneficiary as its general manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer and that the Beneficiary would be employed in a managerial or executive capacity in the United States. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motions.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our decision dismissing the appeal, we concluded that the record did not establish, as required, that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.[1] To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the

[1] Because this issue was dispositive of the Petitioner's appeal, we reserved the issue of whether the Petitioner established that it would employ the Beneficiary in a managerial or executive capacity in the United States. *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).

beneficiary's foreign employer and the proposed U.S. employer are the "same employer" or related as a "parent and subsidiary" or as "affiliates." *See* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C). The regulations 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).

While the Petitioner claimed to have a qualifying relationship with the Beneficiary's foreign employer, the record before us on appeal did not contain primary evidence of the Petitioner's ownership and control and therefore did not demonstrate that the two entities share the requisite common ownership. Further, we concluded that the Petitioner submitted conflicting information regarding its ownership and did not resolve the discrepancies in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-91 (BIA 1988).

On motion, the Petitioner submits a copy of its 2022 Form 1120-S, U.S. Income Tax Return for an S Corporation, which has been marked as an "Amended return" at box H(4) on page 1, along with two amended Schedules K-1. The Petitioner explains that the company's previously submitted tax return contained errors "due to a lack of communication between the staff and the accountant that prepared the taxes." The Petitioner asserts that the amended return serves as "credible evidence" of the company's ownership and is sufficient to resolve the discrepancies in the record.

Upon review, the newly submitted amended tax return does not serve as reliable, probative evidence of the Petitioner's ownership and control and does not provide proper cause for reopening.

The record establishes that the Petitioner is an Illinois corporation established in [redacted] 2021. Probative evidence of ownership and control for a corporation includes the company's articles of incorporation, stock certificates, stock ledger or stock certificate registry, corporate bylaws, the minutes of relevant annual shareholder meetings, and any agreements relating to the voting of shares, the distribution of profit, the management and direction of the company, and any other factor affecting control of the entity. *See Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. at 365. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control.

Here, the Petitioner submitted its articles of incorporation, showing that the company is authorized to issue 1,000 shares of stock. This document reflects that the Petitioner issued 100 of these shares in exchange for consideration of $100. However, the articles of incorporation do not indicate who owns the issued shares, and, to date, the Petitioner has not submitted copies of its issued stock certificates, stock ledger, corporate bylaws, stock purchase agreements, evidence of consideration paid in exchange for stock ownership, or any other primary evidence of its ownership and control.

Further, the limited evidence the Petitioner has submitted to establish a qualifying relationship with Beneficiary's foreign employer contains numerous inconsistencies. Although the Petitioner's business plan stated that it was formed as a "partnership business owned by [redacted] and [redacted] the Petitioner's 2021 IRS Form 1120-S indicated at Schedule K-1 and at Form

1125-E, Compensation of Officers, that the company was wholly owned by the Beneficiary for the entire tax year.

On appeal, the Petitioner submitted a copy of a partnership agreement between [redacted] and [redacted] dated January 27, 2021, in support of its claim that it was formed as a 50/50 partnership between these two individuals.

In our prior decision, we considered this evidence, but emphasized that the Petitioner's claim that it is organized as a partnership is contradicted by its articles of incorporation filed with the Illinois Secretary of State, which indicate it was established as a corporation under the Illinois Business Corporation Act. Further, we emphasized that the tax documentation the Petitioner filed with the IRS indicates that the company is an S Corporation rather than a partnership.

On motion, the Petitioner asserts that the information provided in its 2021 Form 1120-S was incorrect due to a miscommunication with its accountant and has been corrected. The Petitioner submits an amended 2022 Form 1120-S but does not indicate that it has amended its 2021 Form 1120-S, nor does the Petitioner provide evidence that it actually filed amended tax returns with the IRS for either tax year.

On the 2022 Form 1120-S, the preparer marked "Amended return" at box H(4) and indicated at item I that the company has two shareholders. The tax return has two appended Schedules K-1, both of which are marked "Amended K-1." The first identifies the Beneficiary as the owner of 50 of the company's 100 issued shares, and the second identifies [redacted] as the owner of the other 50 shares. However, the accompanying Form 1125E, Compensation of Officers, states that the Beneficiary owns 100% of the shares.

This evidence does not resolve the inconsistencies addressed in our prior decision or provide objective evidence of the actual ownership of the petitioning company. Further, the amended tax return does not support the Petitioner's previous claim that the company is owned in equal parts by [redacted] and [redacted] as it does not identify Mr. [redacted] as an owner of the company. The Petitioner does not attempt to reconcile the information provided on the amended Schedules K-1 with the information in the previously submitted partnership agreement or submit objective evidence demonstrating who owns the Petitioner's 100 issued shares.

In summary, the Petitioner's 2021 tax return indicates that the company is wholly owned by the Beneficiary, the 2021 partnership agreement indicates that the company is owned by [redacted] and [redacted] and the amended 2022 tax return indicates at Schedule K-1 that it is owned by the Beneficiary and Mr. [redacted] and at Form 1125E that it is wholly owned by the Beneficiary. The Petitioner has not resolved these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Although the Petitioner has submitted additional evidence in support of its motion to reopen, it has not established eligibility or submitted new facts that would warrant reopening the proceeding. Accordingly, the motion to reopen will be dismissed.

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner does not contest the correctness of our prior decision. Rather, it states that our prior decision brought an error to its attention, which led the company to instruct its accountant to prepare the amended tax return now submitted on motion. As the Petitioner has neither claimed nor established that our prior decision was based on an incorrect application of law or policy, it has not met the requirements for a motion to reconsider.

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established new facts that warrant reopening the proceeding. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.