U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33961707

Date: OCT. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a company operating automotive repair businesses, 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 Texas Service Center denied the petition, concluding the record did not establish that it had a qualifying relationship with the Beneficiary's foreign employer. The Petitioner later filed a motion to reopen that the Director also denied. The matter is now before us on appeal under 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

The Petitioner stated that 100% of its shares were first owned by another U.S. company, A-C- Inc., but that this company was dissolved, and shares were distributed in January 2018 to the Beneficiary

and his foreign employer.[1] The Petitioner indicated that as of the date the petition was filed 51% of its shares (5100) were owned by the Beneficiary's foreign employer, while the remaining 49% (4900) were owned by the Beneficiary. As such, the Petitioner asserted that the foreign employer was its parent company, and on this basis, they had a qualifying relationship.

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 (a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See* § 203(b)(1)(C) of the Act; *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

Beyond meeting the regulatory definition of qualifying relationship, we also look to regulation and case law which 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.

In denying the petition, the Director determined that the Petitioner did not submit sufficient supporting evidence, beyond stock certificates, to establish its asserted ownership.[2] The Director further reasoned the Petitioner did not provide evidence to demonstrate that there was a successor in interest to A-C-Inc. and the foreign employer or a detailed list of owners and their percentages of ownership. The Director also concluded that "there was no evidence that the foreign entity has continued to exist, nor has it shown to still be doing business." Based on these determinations, the Director concluded the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer. The Petitioner later supplemented the record with additional evidence when filing a motion to reopen. The Director dismissed the motion stating that "the petitioner has still failed to submit [with its] motion to reopen evidence there was a successor of interest between A-C- Inc. and [the foreign employer]."

On appeal, the Petitioner points to submitted documentation relevant to its ownership and contends that it was not sufficiently considered by the Director. We agree. First, in the initial denial decision, the Director concluded the Petitioner did not submit evidence of its ownership beyond stock certificates and "a detailed list of owners and their percentages of ownership." However, the Petitioner not only provided stock certificates (which in and of themselves reflect asserted percentages of ownership), but further submitted written consents of its directors, meeting minutes, a stock ledger, a

[1] The petition was filed in May 2019.

[2] As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. In addition, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting control of the entity. *See Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. at 365.

detailed list of owners, articles of incorporation, IRS Forms 1120 U.S. Corporate Tax Returns from 2018 through 2023, and other bank documentation it claims reflect consideration paid for stocks in the company. The Director did not sufficiently analyze this evidence submitted in response to the request for evidence (RFE) and in support of the motion to reopen. In addition, the Director stated the Petitioner did not establish that the foreign employer still existed and continued to do business, but again did not discuss any of the provided documentary evidence specific to the foreign employer, including numerous foreign employer invoices and financial documents. As such, on remand, the Director should sufficiently consider all the submitted evidence on the record, including that submitted on appeal, to determine whether the Petitioner had, and still has, a qualifying relationship with the Beneficiary's foreign employer.

Further, beyond the Director's decisions, we also conclude the Petitioner did not provide sufficient evidence to demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity. The Petitioner submitted a generic foreign duty description for the Beneficiary that could apply to any manager or executive acting in a business and little detail and supporting documentation to substantiate that he primarily performed managerial or executive level duties abroad.[3] For instance, the Beneficiary's foreign duty description includes no specific discussion of its actual business abroad. The Petitioner also did not clearly indicate whether the Beneficiary qualified as a manager or executive abroad, or both.[4] In addition, the Petitioner submitted numerous foreign employer invoices reflecting his name dated over several years, suggesting his substantial involvement in the foreign employer's day-to-day transactions and his primary engagement in non-qualifying operational duties abroad. In contrast, there is little evidence to substantiate his primary performance of qualifying managerial or executive-level duties abroad.[5] Therefore, the Petitioner did not properly establish that the Beneficiary was employed abroad in a qualifying managerial or executive capacity.

We will therefore withdraw that decision and remand the matter for a new decision that properly considers the evidence of record with respect to whether the Petitioner had a qualifying relationship with the Beneficiary's foreign employer and whether he was employed abroad in a managerial or executive capacity.

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[3] When examining the managerial or executive capacity of a given beneficiary abroad, we will review the petitioner's description of the beneficiary's foreign job duties. The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary abroad and indicate whether such duties were in a managerial or executive capacity. 8 C.F.R. § 204.5(j)(5). Although we do not expect a petitioner to articulate and document every managerial or executive-level task performed by a beneficiary abroad, it is reasonable to require that it would provide sufficient detail and documentation to sufficiently corroborate his performance of qualifying duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial or executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

[4] A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary was primarily engaged in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary was primarily employed abroad in either a managerial or executive capacity.

[5] Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.