U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34316581

Date: OCT. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a marketing consulting services company, 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 on multiple grounds, concluding the record did not establish that: 1) it had a qualifying relationship with the Beneficiary's former foreign employer, 2) the Beneficiary would be employed in a managerial or executive capacity in the United States, 3) the Beneficiary was employed abroad in a managerial or executive capacity, and 4) it had the ability to pay the Beneficiary's proffered wage. 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 dismiss the appeal as the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's former foreign employer. Since this issue is dispositive, we decline to reach and hereby reserve the Petitioner's arguments with respect to the Director's other 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).

I. LAW

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).

II. QUALIFYING RELATIONSHIP

The sole issue we will address is whether the Petitioner established that it had 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 (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.

The Petitioner stated that it was wholly owned by the Beneficiary's foreign employer establishing them as parent and subsidiary. In support of the petition, the Petitioner submitted little supporting documentation to substantiate the foreign employer's ownership. The Director later issued a request for evidence (RFE) requesting that the Petitioner submit additional evidence to sufficiently demonstrate the foreign employer's ownership of the Petitioner, including U.S. tax returns, articles of organization, operating agreements, meeting minutes, documentation of consideration paid for ownership in the company, and/or other similar evidence.

In response, the Petitioner provided a "company agreement" executed in 2020 reflecting in schedule A "Capital Contributions" that the foreign employer owned 100% of the Petitioner. However, despite schedule A including a portion for information on the amount of the capital contribution made for a membership interest in the Petitioner, this section of the schedule was left blank. The Petitioner also submitted a "Unanimous Written Consent of the Managers and Owners" of the company indicating that the foreign employer would receive 100% ownership in the Petitioner "upon receipt of consideration therefore [*sic*] certificates representing ownership in [the Petitioner] issued by the Secretary/Manager." In addition, the Petitioner provided a 2022 IRS Form 1120 U.S. Corporation Income Tax Return, within which, the company answered "No" in schedule K, item 4.b. when asked whether any foreign or domestic organization owned more than 20% of the "corporation's stock."

In concluding the Petitioner did not establish a qualifying relationship, the Director reasoned that the submitted 2022 IRS Form 1120 indicated that the Petitioner was not a subsidiary of the foreign employer as asserted. On appeal, the Petitioner contends that the provided agreement and written consent reflect that the foreign employer wholly owns the company representing "prima facie" evidence of the asserted ownership. The Petitioner asserts that its 2022 IRS Form 1120 included an error "showing that the Beneficiary owned 100% of the [Petitioner], which was a mistake entered into by the Petitioner's accountant." The Petitioner submits an affidavit from the Beneficiary explaining the mistake and its correction. The Petitioner also provides 2020, 2021, and 2023 IRS Forms 1120 showing in schedule G that the foreign employer owns 100% of the Petitioner's "stock."

Upon review, the Petitioner did not submit sufficient evidence to establish that it is wholly owned by the foreign employer, and in turn, that a qualifying relationship exists. As general evidence of a petitioner's claimed qualifying relationship, the Petitioner must submit certificates of formation or organization of a limited liability company (LLC). LLCs are also 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. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documentation, U.S. Citizenship and Immigration Services (USCIS) is unable to determine the elements of ownership and control.

Although we acknowledge that the Petitioner provided a company agreement, unanimous consent document, and IRS Forms 1120 indicating that it is wholly owned by the foreign employer, the lack of other material evidence leaves substantial uncertainty as to its actual ownership. For instance, schedule A of the submitted company agreement does not reflect the amount of the capital contribution the foreign employer paid for its membership interest in the Petitioner. Likewise, the Petitioner also did not submit any membership certificates, which its unanimous consent document states would be issued upon the payment of consideration for such a membership interest. The record further includes no documentation to substantiate that the foreign employer paid any capital contribution for its asserted membership interest in the Petitioner or the amount of this required capital contribution. In addition, although the Petitioner provided IRS Forms 1120 to substantiate the foreign employer's asserted ownership, this tax documentation shows stock ownership in schedule G, ownership applicable to a corporation, rather than membership interests in the company as would be reflected in a limited liability company's tax return. As such, the provided corporate tax documentation is of limited probative value in demonstrating the Petitioner's actual ownership.

The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affected party has the burden of proof to establish eligibility for the requested benefit at the time of

filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). Therefore, for the foregoing reasons, the Petitioner did not sufficiently demonstrate that it is wholly owned by the foreign employer and that a qualifying relationship existed between these entities when the petition was filed.

ORDER: The appeal is dismissed.