U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23414621

Date: DEC. 1, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner identifies itself as an engineering consultant operation and seeks to permanently employ the Beneficiary as its president 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 an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: 1) it has a qualifying relationship with the Beneficiary's claimed foreign employer; 2) the Beneficiary was employed in a managerial or executive capacity abroad prior to his entry into the United States as a nonimmigrant; and 3) the Beneficiary would be employed in a managerial or executive capacity in the United States.[1] The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that it has a qualifying relationship with the Beneficiary's claimed foreign employer. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate regarding the Beneficiary's foreign and proposed employment. *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. LEGAL FRAMEWORK

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.

[1] In the matter of a previously filed Form I-140 (with receipt number [redacted]) the Director of the Texas Service Center revoked approval of the petition and entered a separate finding of willful misrepresentation of a material fact.

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 petition must also be accompanied by evidence demonstrating the Petitioner's ability to pay the Beneficiary's proffered wage at the time of filing. 8 C.F.R. § 204.5(g)(2).

II. QUALIFYING RELATIONSHIP

This decision we will address the Director's determination that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's employer abroad. To establish a "qualifying relationship," the Petitioner must show that it and the Beneficiary's foreign employer are the same employer (i.e., a U.S. entity with a foreign office) or that they are related as a "parent and subsidiary" or as "affiliates." *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

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.

In the present matter, the Petitioner claims that it is the subsidiary of the Beneficiary's foreign employer in Syria. *See* 8 C.F.R. § 204.5(j)(2) (for definition of "subsidiary"). However, the record lacks evidence that adequately and consistently establishes the Petitioner's ownership and therefore it does not support the Petitioner's claim.

The Petitioner's supporting evidence includes a personnel plan which states that the Petitioner is "[t]he U.S. Branch" of [redacted] in Syria. However, the Petitioner provided corporate documents from 2012, including its certificate of filing and certificate of formation, which show that the Petitioner was established as a for-profit corporation and is authorized to issue up to 50,000 shares of stock with a par value of $1.00 per share. These documents indicate that the Petitioner is therefore not a branch of a foreign entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(J) (defining "branch" as an operating division or office of the same organization housed in a different location). The Petitioner also provided its 2017 tax return, complete with Schedule K-1, which lists the Beneficiary and [redacted] as each owning 40% of the Petitioner and [redacted] as owning the remaining 20%, thus undermining the Petitioner's prior claims that is either a branch or a subsidiary of a foreign entity.

Further, although the Petitioner provided a document titled "Joint Venture Agreement" which referred to the Beneficiary's claimed foreign employer – [redacted] – as "Parent Company" and to the Petitioner as "U.S. Branch," the agreement did not address the issue of the

Petitioner's ownership or even identify the Petitioner as a party to the agreement; rather, the agreement stated that it was "between [redacted] of . . . [redacted] . . . and [redacted] of [the Petitioner]," thus indicating that the named individuals, not their respective employers, were the contracting parties. Further, the agreement confusingly refers to the joint venture as a "branch business office" in [redacted] Texas, even though neither the agreement nor the Petitioner's incorporation documents indicate that this reference is accurate. These inconsistencies concerning the Petitioner's ownership must be resolved through the submission of independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence also does not establish that the Petitioner and [redacted] previously referred to as the "Parent Company," have an affiliate relationship, which requires the Petitioner to establish that it and the Beneficiary's foreign employer are owned and controlled by a common parent or by a common group of individuals with each individual owning and controlling approximately the same proportion of each entity. 8 C.F.R. § 204.5(j)(2) (defining the term "affiliate"). Although the Petitioner provided translations of two certificates of corporate registration, the translated materials cannot be deemed as having been properly certified, as they are not accompanied by a translator's statement certifying that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *See* 8 C.F.R. § 103.2(b)(3). One of the translated copies is stamped "Sworn translation" and contains what appears to be the first initial and name of the translator. However, it is not clear that a "swom translator" is synonymous with a certified translator and that the translated documents meet the regulatory criteria. As such, we cannot meaningfully determine whether the translated material is accurate. The Petitioner resubmitted these documents in response to the Director's request for evidence (RFE), asserting that the foreign certificate of corporate registration serves "as evidence of the [B]eneficiary's executive partnership with the foreign entity." However, like the prior submission of these documents, the copies submitted in response to the RFE were similarly flawed in that they were not accompanied by certified English translations as required by 8 C.F.R. § 103.2(b)(3).

The Petitioner also asserted that its own articles of incorporation and corporate bylaws "serve as evidence of the [B]eneficiary's partnership with the U.S. entity." Although the Petitioner provided a copy of its corporate bylaws, this document does not identify the company's owners. In fact, although the bylaws are signed by the Beneficiary and [redacted] each in their individual capacity as "executive partner," neither the bylaws nor other evidence in the record establishes that the title of "executive partner" confers with it ownership and control of the Petitioner.

The Petitioner also provided its tax returns from 2018-2020, each complete with a Schedule K-1, which contains information about the Petitioner's claimed shareholders. Schedule K-1 in the 2018 tax return contains the same information as in the previously discussed 2017 tax return in that both tax returns show the Beneficiary and [redacted] as each owning 40% of the Petitioner and [redacted] as owning the remaining 20%. However, the Schedule K-1s in the Petitioner's 2019 and 2020 tax returns list the Beneficiary and [redacted] as the two owners, each with a 50% ownership interest. The Petitioner did offer corroborating evidence, such as a corporate stock certificate ledger, stock certificate registry, or comparable evidence documenting the company's shareholders, the total number of shares issued to each shareholder, and any changes in the Petitioner's ownership to establish who owns and controls the U.S. entity. Given the discrepancies concerning the Petitioner's ownership, corroborating evidence is particularly critical in this matter, where the

Petitioner originally claimed that it is owned by another entity, but then submitted tax returns showing that it is owned by individuals. *See Ho*, 19 I&N Dec. at 591-92.

On appeal, the Petitioner submits three stock certificates – nos. 1010, 1011, and 1012 – all issued in 2013. Certificate nos. 1010 and 1012 show that they were issued to the Beneficiary and to [redacted] respectively, giving each 400 shares; certificate no. 1011 shows that 200 shares were issued to [redacted] The Petitioner provided no evidence establishing that these were the only shares issued, a possibility we cannot rule out given that the Petitioner is authorized to issue up to 50,000 shares. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Further, although two stock purchase agreements have been submitted on appeal, showing ownership changes that align with the ownership distributions discussed in the Petitioner's 2019 and 2020 tax returns, both purchase agreements show January 2018 as their respective dates of execution. It is therefore unclear why the Petitioner continued to list [redacted] as an owner in its 2018 tax return, which accounts for the 2018 calendar year ending in December 2018, if [redacted] sold his ownership interest to the two remaining shareholders in January 2018, the start of the calendar year. *See id.*

Finally, although the Petitioner claims that it has been unable to "request all the documents" from the Syrian government offices due to the ongoing war in Syria, it does not specify which documents it seeks to obtain or what, if any, relevant information the purportedly unobtainable documents hold. Furthermore, as discussed above, the Petitioner has made inconsistent claims and provided deficient evidence regarding its own ownership. As previously noted, the Petitioner originally claimed to be a branch or subsidiary of a foreign entity, but in response to the RFE and on appeal it provided stock certificates and tax returns which are wholly inconsistent with either claim. To date, the Petitioner has neither acknowledged nor provided evidence to resolve the previously noted inconsistencies. Nor has the Petitioner provided adequate evidence pertaining to the foreign entity's ownership to establish that it and the foreign entity are affiliates by virtue of sharing common ownership, either by one individual or by multiple individuals whereby the same individuals own both the Petitioner and the foreign entity. 8 C.F.R. § 204.5(j)(2) (defining the term "affiliate").

For the reasons discussed above, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's claimed foreign employer. Therefore, this petition cannot be approved.

ORDER: The appeal is dismissed.