U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19925600

Date: JUN. 13, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as an operator of a franchised restaurant location, seeks to permanently employ the Beneficiary as its chief executive officer (CEO) in the United States under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer, 2) it was doing business as defined by the regulations, 3) the foreign employer was doing business abroad, 4) it had the ability to pay the Beneficiary's proffered wage[1], 5) the Beneficiary would be employed in a managerial or executive capacity in the United States, and 6) the Beneficiary was employed abroad in a managerial or executive capacity. On appeal, the Petitioner contends the Director erred as to each ground for denial and asserts the Beneficiary is eligible for the benefit sought.

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 as the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's former foreign employer. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments related 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. 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

[1] The Director also emphasized that the Petitioner did not submit IRS Forms 941, Employer's Quarterly Federal Tax Returns, for the 1st and 2nd quarters of 2021. The Director separated this observation from the other grounds for denial. It is not clear whether this was intended as a separate ground for denial; regardless, it is not by itself a ground for denying the petition and it will therefore be withdrawn.

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 former 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.

In a support letter, the Petitioner indicated that it and the foreign employer qualified as affiliates since the same individual [redacted] owned 51% of the shares of the Petitioner and 100% of the shares of the foreign employer. In support of this assertion, the Petitioner submitted a "Conditional Consent to Assignment of Ownership Interest" dated in May 2019 stating that "all of the ownership/membership interests in and to the [the Petitioner] shall be owned as follows: [redacted] (51%) and [redacted] (49%)." The agreement indicated that this transaction was related to the purchase of a franchised [redacted] restaurant and stated that [redacted] would "continue to serve as the Operations Principal of the restaurant and President of the Franchisee." The Petitioner also provided a bank statement reflecting that [redacted] wired $582,000 to an unidentified party on September 27, 2019.

Later in response to the Director's request for evidence (RFE), the Petitioner provided an "Agreement for the Purchase and Sale of Capital Stock of [the Petitioner]" executed between [redacted] and [redacted] in February 2019. The agreement indicated that [redacted] was purchasing 510,000 of the 1,000,000 outstanding shares of the Petitioner from [redacted] for $1,782,000, including a $100,000 down payment in January 2019, $1,100,000 paid within five days of the agreement, and a remaining

$582,000 to be transferred within five days of written approval of the transaction from [redacted] corporate. The Petitioner contends that pursuant to this agreement, [redacted] gained a 51% ownership interest in the company, giving him majority ownership in the Petitioner and the foreign employer.

Upon review, we conclude that the Petitioner did not provide sufficient evidence to establish its ownership as necessary to demonstrate a qualifying relationship with the foreign employer. As general evidence of a petitioner's claimed qualifying relationship, a petitioner must submit all relevant corporate documentation to substantiate whether a stockholder maintains ownership and control of a corporate entity. Stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must be examined to determine the total number of shares issued, the exact number issued to each 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 factors 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.

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, the Director was justified to inquire in the RFE beyond the May 2019 "Conditional Consent to Assignment of Ownership Interest" initially submitted by the Petitioner, including requesting that it submit all documents relevant to ownership and control of the company such as articles of incorporation, bylaws, meeting minutes, a stock ledger, all stock certificates, stock purchase agreements, and supporting evidence of consideration paid for any stocks.

The Petitioner provided little of the required supporting documentation necessary to sufficiently establish its asserted ownership. For instance, the Petitioner did not submit any stock certificates, a stock ledger, its articles of incorporation, minutes of shareholder meetings to substantiate the transference of shares, nor evidence of consideration paid for shares. As noted, the Petitioner did submit a stock purchase agreement executed between [redacted] and [redacted] in February 2019, which included an agreed upon purchase price and payment schedule. However, the record does not include supporting documentation to corroborate that a majority of shares were transferred to [redacted] including stock certificates in [redacted] name, a stock registry and shareholder minutes reflecting this transaction, or even amendments to the Petitioner's articles of incorporation showing this change in ownership. Further, there is little supporting evidence to substantiate that [redacted] purchased the shares as agreed upon in the provided stock purchase agreement, such as documentation reflecting his payment of the amounts listed in the agreement. We acknowledge that the Petitioner provided a bank statement indicating that [redacted] wired $582,000 on September 27, 2019, the same amount of the agreed upon final payment for the 510,000 shares in the Petitioner. However, there is no indication as to whom this money was wired, and this transfer is dated approximately four months after the May 2019 "Conditional Consent to Assignment of Ownership Interest."

In addition, it is also noteworthy that the May 2019 "Conditional Consent to Assignment of Ownership Interest" includes no acknowledgement from the franchisor consenting to the transaction, a requirement of the completion of the stock purchase. The agreement itself is also termed as "conditional," suggesting something other than a final agreement. Further, this document states that

[redacted] would "continue to serve as the Operations Principal of the restaurant and President of the Franchisee," leaving uncertainty as to [redacted] control over the Petitioner. Again, without full disclosure of all relevant documents, we are unable to definitively determine the ownership and control of the Petitioner. The Petitioner must resolve inconsistencies 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). As such, the Petitioner has not submitted sufficient supporting evidence to establish its ownership, and in turn, that it has a qualifying relationship with the Beneficiary's foreign employer.

The Petitioner also did not sufficiently demonstrate the foreign employer's ownership as necessary to establish a qualifying relationship. To support of the foreign employer's ownership, the Petitioner submitted this company's bylaws executed in August 2014. The bylaws indicated in Articles 4 and 5 that [redacted] had contributed 5 million Chinese Yuan to the foreign employer and listed him as its sole shareholder. Likewise, the Petitioner pointed to a submitted 2018 foreign employer audit report which stated, "in accordance with the Resolutions of Shareholders made in August of year 2014, the modified bylaw[s] of the company, and the transfer of shares, the shareholder [was] changed to [redacted]' A provided 2019 foreign employer audit report further reflected that it was established as a "company of limited liabilities [*sic*] established on 07/02/2002" and that its "legal representative" was [redacted]

Again, the record lacks supporting documentation to substantiate [redacted] claimed 100% ownership of the foreign employer's shares. For instance, the provided bylaws appear to list a share certificate number[2], a certificate that has not been provided on the record. Likewise, it is not clear from whom [redacted] acquired the foreign employer shares in 2014, how he did so by contributing 5 million Chinese Yuan, nor is there supporting contemporaneous evidence of this transaction or his contribution. The acquisition of shares in a "limited liability company" and the documentation of such a transaction through the company's bylaws would be inconsistent with typical laws in the United States controlling such matters, yet the Petitioner offers little explanation or supporting documentation to establish how the Beneficiary gained ownership of the foreign employer's shares under Chinese law. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Therefore, without further explanation and evidence, we conclude that the submitted documentation is insufficient to establish that [redacted] owns 100% of the shares of the foreign employer as claimed.

The Petitioner has not established its ownership or that of the foreign employer with sufficient supporting evidence. Again, 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. For the foregoing reasons, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is dismissed.

[2] The "bylaws" of the foreign employer indicated that [redacted] was issued a share certificate number [redacted]