U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26274404

Date: APR. 21, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, which sells construction supplies, seeks to permanently employ the Beneficiary as a 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 that the record did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The matter is now before us on appeal. 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.

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. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The Petitioner specifically refers to the Beneficiary's past and proposed employment as managerial, and therefore, we need not address the requirements for an executive capacity.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

Regarding the Beneficiary's claimed employment abroad, the Petitioner stated that the Beneficiary worked for a company in Brazil called [redacted] from 2015 until the Beneficiary entered the United States in June 2017. In denying the petition, the Director determined that "the record does not any written statements or documentation from [redacted] indicating that the beneficiary worked for them in a primarily managerial capacity," and "no evidence was submitted establishing the relationship between the petitioner and the foreign entity(s). The record also does not include any evidence of organizational structure or staff the beneficiary managed during employment outside the United States."

We agree with the Director that, for several reasons, the Petitioner has not shown the Beneficiary's claimed employment with [redacted] establishes the Beneficiary's eligibility for the classification sought.

The petitioning U.S. entity provided a statement describing the Beneficiary's claimed employment abroad, but did not explain how the author of the statement had knowledge of the Beneficiary's employment abroad. The Petitioner stated that the Beneficiary's duties "at the Brazilian affiliate . . . were primarily managerial in nature." The Petitioner listed various responsibilities, stating, for instance, that the Beneficiary "was in charge of analysis of the operation system and destination of products and specialized services," and "was in charge of the establishment of operational objectives and work plans, as well as the delegation of assignment to subordinate employees." The statement lists several areas of responsibility, but does not describe the actual tasks that the Beneficiary performed or establish that the Beneficiary was able to delegate operational tasks to subordinate employees. As a result, the above job description is a general statement of the Beneficiary's authority that does not establish that he worked primarily as a manager.

The Petitioner did not submit a letter from [redacted] to confirm and describe the Beneficiary's employment there, as required by 8 C.F.R. § 204.5(g)(1). The Director requested "a statement from an authorized official of the company abroad" to confirm and describe the Beneficiary's claimed employment with [redacted] The Petitioner's response did not include any statement or documentation from [redacted] Instead, the Petitioner provided its own revised statement. As before, the statement focused on areas of responsibility rather than specific duties, and did not establish the subordinate personnel structure that

would have performed the operational tasks related to the responsibilities listed. The Petitioner's two general statements are not sufficient to show that [redacted] employed the Beneficiary abroad in a qualifying managerial or executive capacity.

In addition to showing qualifying duties, the petitioning U.S. employer must establish that it has a qualifying relationship with the beneficiary's employer abroad. A petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (e.g., a U.S. entity with a foreign office) or 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). In this proceeding, the Petitioner has not established that it has a qualifying relationship with Icon.

In its initial statement, the Petitioner called [redacted] its "Brazilian affiliate," but the Petitioner also referred to the "relationship between the parent and subsidiary," without specifying which company is the parent and which is the subsidiary. The Petitioner must resolve this discrepancy 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 discussed below, the Petitioner has not provided the evidence necessary to resolve the discrepancy and meet its burden of proof.

The Petitioner is a limited liability company (LLC) established in Florida in [redacted] 2018. The record names two individual members of the LLC, each of whom owns a 50% interest. The Petitioner also submitted copies of a Portuguese-language document dated July 2017; the first page of a second, undated Portuguese-language document; and a "Share Sale and Purchase Agreement" dated April 2018. None of these documents mentions [redacted] and the Petitioner did not explain their relevance.

The Portuguese-language documents do not include certified English translations as required by 8 C.F.R. § 103.2(b)(3), which greatly limits their evidentiary weight. The partial, undated document names a different company, [redacted] and two individuals with the initials S.U.J. and E.A.S., neither of whom are members of the petitioning LLC. The July 2017 document mentions the name of S.U.J. and one of the members of the petitioning LLC, and a U.S. company called [redacted] That is not the name of the petitioning LLC, which came into existence a year after the date on this document.

The English-language "Share Sale and Purchase Agreement" indicates that a member of the petitioning LLC purchased 30% of [redacted] from S.U.J. in April 2018. The document also mentions [redacted] but not the petitioning LLC, which, as noted, did not exist prior to [redacted] 2018.

The documents that the Petitioner has submitted do not mention [redacted] confirm [redacted] existence or its employment of the Beneficiary, or establish that [redacted] has a qualifying relationship with the Petitioner.

Furthermore, qualifying employment abroad must have occurred within a specific period. If a beneficiary is outside the United States, then the Beneficiary must have been employed outside the United States for at least one year during the three years prior to the filing of the petition. 8 C.F.R. § 204.5(j)(3)(i)(A). If the beneficiary is already in the United States working for the same employer or a related employer, then the beneficiary must have been employed abroad for at least one year in the three years preceding the beneficiary's entry as a nonimmigrant. 8 C.F.R. § 204.5(j)(3)(i)(B).

Neither of these conditions applies in this case. The record shows that the Beneficiary entered the United States in June 2017, more than four years before the Petitioner filed the petition in August 2021. But the Beneficiary did not enter the United States to work for the Petitioner. The Beneficiary entered the United States as a B-2 nonimmigrant visitor in June 2017, and changed status to the F-2 spouse of an F-1 nonimmigrant student in February 2019. He was still in F-2 status when the Petitioner filed the petition on August 26, 2021. B-2 and F-2 nonimmigrants are not permitted to work in the United States. *See* 8 C.F.R. §§ 214.1(e), 214.2(f)(15)(i). Therefore, the Beneficiary was not authorized to work in the United States between 2017 and 2021.

The Petitioner also claimed that the Beneficiary "continued working for the [petitioning] U.S. employer . . . as a sub-contractor. In between jobs the beneficiary has also worked as a manager for other entities." The Petitioner asserted that the Beneficiary would "properly be included in the [Petitioner's] payroll" after approval of the petition. As a subcontractor, the Beneficiary would not have been the Petitioner's employee. Even then, the Petitioner has not submitted documentation to show that the Beneficiary performed intermittent contract work for the Petitioner in the United States. The Petitioner has not met its burden of proof to show that the Beneficiary was working for the Petitioner in the United States from 2017 to 2021.

A break in qualifying employment longer than two years will interrupt a beneficiary's continuity of employment with the petitioner's multinational organization. Such breaks may include, but are not limited to, intervening employment with a nonqualifying U.S. employer or periods of stay in a nonimmigrant status without work authorization. *Matter of S-P-, Inc.*, Adopted Decision 2018-01 4 (AAO Mar. 19, 2018). The Beneficiary was in the United States without employment authorization for over four years at the time the Petitioner filed the petition. Given this lengthy gap in qualifying employment, the Beneficiary will not be eligible for the classification sought until he departs the United States and accumulates at least a year of qualifying employment abroad.

On appeal, the Petitioner disputes the Director's "erroneous decision," stating that it "has sustained its burden of proving that [the Beneficiary's] duties were 'primarily' managerial," and that it had submitted "[s]ubstantial supporting documentation establishing he delegated the company's regulatory tasks to subordinates." The Petitioner does not elaborate or identify the previously submitted evidence to which it refers. A section of the Petitioner's appellate brief bears the heading "The Relationship Between the United States Petitioner and the Foreign Employer and Managerial Functions," but that section of the brief does not address, explain, or mention the Petitioner's claimed relationship with [redacted]

As shown above, the record does not establish that [redacted] employed the Beneficiary in Brazil in a managerial or executive capacity; that [redacted] has a qualifying relationship with the Petitioner; or that the Beneficiary worked for [redacted] for at least one year during the relevant three-year period before the filing of the petition. For all these reasons, we agree with the Director that the Petitioner has not established that the Beneficiary's claimed employment abroad qualifies him for the classification sought in this proceeding.

III. CONCLUSION

The Petitioner has not established that the Beneficiary was employed in a managerial or executive capacity with a qualifying employer abroad. This conclusion determines the outcome of the appeal. Therefore, we reserve the remaining issue regarding the Beneficiary's proposed employment in the United States.[1]

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).