U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19727391

Date: MAR. 18, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a manufacturer of personal transporters, seeks to continue the Beneficiary's temporary employment as its Senior Director of Product Management and Marketing under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it has a qualifying relationship with the Beneficiary's foreign employer. The matter is now before us on appeal.

On appeal, the Petitioner maintains that the previously submitted evidence demonstrates it has a qualifying affiliate relationship with the Beneficiary's foreign employer based on common indirect ownership by the same parent company.

In these proceedings, the Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon de *novo* review, we conclude that the Petitioner has met this burden.[1] Accordingly, we will sustain the appeal.

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 (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

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,*

[1] The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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. *Church Scientology Int'l*, 19 I&N Dec. at 595. Control may be *de jure* by reason of ownership of more than 50 percent of outstanding stocks of the other entity or it may be *de facto* by reason of control of voting shares through partial ownership and possession of proxy votes. *Hughes*, 18 I&N Dec. at 293.

For purposes of this nonimmigrant classification, the definition of "affiliate" includes one of two subsidiaries both of which are owned and controlled by the same parent or individual. 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*). A "parent" is a firm, corporation or other legal entity which has subsidiaries. 8 C.F.R. § 214.2(l)(1)(ii)(I). The definition of "subsidiary" includes a firm, corporation, or other legal entity of which a parent owns, *directly or indirectly*, more than half of the entity and controls the entity. 8 C.F.R. § 214.2(l)(1)(ii)(K) (emphasis added).

The Petitioner has consistently explained that it has an affiliate relationship with the Beneficiary's foreign employer based on common, indirect ownership by the same parent company, [redacted]. Specifically, the Petitioner provided evidence that [redacted] owns 100% of the shares of [redacted], a U.S. company which wholly owns the Petitioner. In addition, the Petitioner provided evidence that [redacted] owns 100% of the shares of [redacted] which wholly owns [redacted] the entity that employed the Beneficiary in China.

Based on this evidence, the record establishes that the petitioning U.S. entity and [redacted] are both subsidiaries of [redacted] because it indirectly owns more than half of each entity and has *de jure* control of both entities. As both the U.S. and foreign entities are subsidiaries that are owned and controlled by the same parent, they are affiliates according to the definition of the term at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*).

The Director acknowledged in his decision that the "record and supporting documents" establish that both [redacted] and [redacted] are owned by [redacted] and that these two intermediary entities own the petitioning entity and [redacted], respectively. The Director appears to have determined that no affiliate relationship exists because the Beneficiary's current and proposed employers are not *directly* owned by the same parent, but the regulatory definition of affiliate, when read with the definitions of parent and subsidiary, does not require affiliates to share a common direct parent company.

Based on the foregoing discussion, the Petitioner has established by a preponderance of the evidence that it has a qualifying affiliate relationship with the Beneficiary's foreign employer and has therefore overcome the sole ground for denial of the petition. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.