U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7539233

Date: FEB. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Executive or Manager

The Petitioner, a provider of property and business management services, seeks to permanently employ the Beneficiary as its chief financial officer (CFO) 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). 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 that it would employ the Beneficiary in a managerial capacity in the United States.

On appeal, the Petitioner asserts that the Director did not thoroughly review the submitted evidence and erroneously applied the statutory definition of "managerial capacity" to the Beneficiary's proposed executive position.

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 remand the matter to the Director for further consideration and entry of a new decision.

I. LEGAL FRAMEWORK

An executive or manager who has worked abroad for at least one year may immigrate to the United States to continue to render executive or managerial services to the same employer, or a subsidiary or affiliate. Section 203(b)(1)(C) of the Act. If, as in this case, a beneficiary already works in the United States for a petitioner, the business must demonstrate that the beneficiary's year of foreign employment occurred in the three years preceding his or her entry as a nonimmigrant. 8 C.F.R. § 204.5(j)(3)(i)(B).

A petitioner for a multinational executive or manager must submit a statement from an authorized company official demonstrating that a beneficiary meets the requirements discussed above. 8 C.F.R. §§ 204.5(j)(3)(i)(A)-(C). The statement must also establish that the petitioner has been doing business

for at least one year. 8 C.F.R. § 204.5(j)(3)(D). Further, U.S. Citizenship and Immigration Services (USCIS) may request additional evidence. 8 C.F.R. § 204.5(j)(3)(ii).

II. U.S. EMPLOYMENT

The Petitioner has consistently claimed that it will employ the Beneficiary in an executive capacity as the CFO of its "Florida division." The Petitioner, an Iowa corporation, indicates that its branch office in Florida is responsible for providing management services to its claimed [redacted] affiliate, [redacted], and its related subsidiary and affiliated companies located in several Caribbean countries, where the group operates 18 pawn shops. The Petitioner indicates that its original office in Iowa provides similar management services to related U.S. companies.

Although the Director's decision cites to the statutory definitions of both "managerial capacity" and "executive capacity" at section 101(a)(44) of the Act, it also states, incorrectly, that the Petitioner claimed that the Beneficiary would be employed as a manager. We agree with the Petitioner's assertion that the Director did not review the Beneficiary's eligibility as an executive and solely focused on whether he would be employed in a managerial capacity.

In addition, the Director's analysis of the evidence submitted in support of the petition did not appear to take into account the Beneficiary's lengthy position description or the Petitioner's explanation of its role in managing [redacted] and its related entities. The denial decision contains limited references to specific evidence and appears to be based on the following observations: (1) "it is unclear if the beneficiary is employed by [the Petitioner] or [redacted]" as some of the persons who report to him appear on the [redacted] organizational chart; (2) two of the three U.S.-based employees who report to the Beneficiary do not have baccalaureate degrees; (3) the position description indicates the Beneficiary "will actively participate in the performance of non-qualifying duties"; and (4) "USCIS is unable to determine how the beneficiary can be responsible for the financial activities" of operations located in Caribbean or employees of [redacted].

The Director did not, however, identify what specific duties were determined to be "non-qualifying" or explain how the other noted deficiencies were relevant to the Petitioner's eligibility as an multinational executive. The Petitioner submitted a letter that allocated over three pages to describing the Beneficiary's position as CFO and the Director's decision devotes only one sentence to discussing those duties. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Accordingly, we will withdraw the Director's decision and remand the matter. On remand, the Director shall consider the arguments and evidence submitted by the Petitioner and analyze whether the Beneficiary would be employed in an executive capacity.

With respect to the Director's concerns regarding the identity of the Petitioner's employer, we note that the Petitioner provided evidence that the Beneficiary works in its [redacted] Florida office and was issued IRS Forms W-2 for the years 2016 through 2018.

However, there are some details of the working and financial relationship between the Petitioner, its "Florida division," and [redacted] that have not been adequately explained. For example, the Petitioner submitted bank statements for a Florida company called "[redacted]" that reflect substantial incoming funds and payment of payroll, benefits and other operating expenses, but none of the Petitioner's statements, organizational charts or other supporting evidence mention this entity. Accordingly, it is unclear what role it plays in the overall organization, how it is related to the Petitioner and Beneficiary, and why its bank statements were provided.

As the matter will be remanded, the Director may request additional evidence, such as a copy of the Beneficiary's employment contract with the Petitioner, the Petitioner's management agreement with [redacted], evidence of payments made by [redacted] for management services provided by the Petitioner, and any other evidence deemed warranted.

III. QUALIFYING RELATIONSHIP

Although not addressed in the denial decision, the Petitioner did not submit sufficient evidence to establish that it maintains a qualifying relationship with [redacted] A U.S. petitioner seeking to employ a multinational executive or manager must establish a qualifying relationship between itself and a beneficiary's foreign employer. To establish a qualifying relationship under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. 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).

The Petitioner has consistently claimed a qualifying relationship with [redacted] based on common ownership of both companies by the same two individuals, [redacted] and [redacted] While it has at times referred to [redacted] as its subsidiary, we note that the Petitioner has not established that it owns any shares in [redacted], either directly, or indirectly through its ownership of a subsidiary company. Therefore, the Petitioner will need to submit evidence to establish an affiliate relationship.[1]

At the time of filing in September 2017, the Petitioner stated that [redacted] each owned 50% of its issued stock. In addition, it submitted a "Register of Members" for [redacted] indicating that its 50,112 shares were distributed as follows:

[redacted]	25,673	[redacted]	1,814
[redacted]	18,430	[redacted]	1,358
[redacted]	2,837		

[1] An "affiliate" refers to: one of two subsidiaries both of which are owned and controlled by the same parent or individual; or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 204.5(j)(2). The term "subsidiary" means 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; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity. *Id.*

The ownership structure described suggests that the Petitioner and [redacted] had an affiliate relationship based on common ownership by [redacted] who was claimed to directly own 50% of the Petitioner and 51.23% of [redacted][2] If an individual owns and controls the Petitioner and the foreign entity, then the companies will be deemed to be affiliates under the definition even if the entities have multiple owners.

However, in response to the Director's notice of intent to deny (NOID), the Petitioner submitted an updated "Summary of Share Breakdown" for [redacted] indicating that the foreign entity's ownership structure had changed in 2017 to the following:

[redacted]	45,917
	2,837
	1,358

The Petitioner stated that "[redacted] and [redacted] (through their Iowa legal entity, [redacted]) own 91.63% of foreign subsidiary [redacted]."

In determining whether a qualifying relationship exists, USCIS must examine the individuals or entities that own and control the U.S. and foreign employers. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 595 (Comm'r 1988). Here, the Petitioner has not submitted sufficient supporting evidence to corroborate its own ownership or the ownership of [redacted], which is critical to determining whether it has a qualifying relationship with [redacted]. For example, the Petitioner did not submit copies of its own stock certificates, articles of incorporation or other evidence of its ownership, nor did it submit any comparable evidence for [redacted] In addition, the Petitioner's NOID response did not provide an updated member register for [redacted] reflecting the changes in that company's ownership, or corroborating evidence such as copies of stock or membership certificates the company has issued.

On remand, the Petitioner should be given an opportunity to submit additional evidence of the ownership and control of all entities involved to corroborate its claim that it maintains a qualifying relationship with the Beneficiary's foreign employer.

III. CONCLUSION

As the Director's decision did not adequately evaluate the Beneficiary's eligibility as an executive or address deficiencies in the record relating to the Petitioner's qualifying relationship with the Beneficiary's foreign employer, we will remand the matter to the Director for further consideration. The Director should request any additional evidence deemed necessary and allow the Petitioner a reasonable time to respond.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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[2] The Petitioner also claimed that [redacted] and [redacted] own [redacted] and [redacted] but did not provide evidence of ownership for those claimed affiliates.