



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF P-, LLC

DATE: JULY 18, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business running a chain of [REDACTED] stores, seeks to temporarily employ the Beneficiary as the president of its new office under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 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, California Service Center, denied the petition. The Director found that the Petitioner did not establish a qualifying relationship with the foreign employer. We denied a subsequent appeal, also finding that the Petitioner did not establish a qualifying relationship. In addition, we found that the Petitioner did not establish that the Beneficiary has been, or will be employed in a managerial or executive capacity.

The matter is now before us on motion to reopen. With its motion, the Petitioner submits a brief and additional evidence and asserts that we erred in our prior decision. Upon review, we will deny the motion to reopen.

I. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B, Notice of Appeal or Motion that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8

C.F.R. § 103.5(a)(4), “*Processing motions in proceedings before the Service*,” “[a] motion that does not meet applicable requirements shall be dismissed.”

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), “Requirements for motion to reopen,” states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence.

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states:

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . was filed.¹

Further, the new facts must possess such significance that, “if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case.” *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

Here, the Petitioner has submitted new evidence to support a motion to reopen. However, as will be discussed below, the Petitioner has not established that the new evidence would change the outcome of the case or that the petition warrants approval. Accordingly, we will deny the motion to reopen.

II. QUALIFYING RELATIONSHIP

The first issue to be addressed is whether the Petitioner has established that it has a qualifying relationship with the foreign employer. Upon review of the Petitioner’s assertions and additional evidence on motion, we conclude that it has not established that it has a qualifying relationship with the foreign employer.

To establish a “qualifying relationship” under the Act and the regulations, 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 generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The Petitioner claimed to be an affiliate of the Beneficiary’s former employer. In dismissing the appeal, we noted that the Petitioner submitted conflicting evidence as to the identity of the

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part: “Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.”

(b)(6)

Matter of P-, LLC

Beneficiary's foreign employer abroad, either [REDACTED] of [REDACTED] or [REDACTED] of India. We noted that without evidence to substantiate the identity of the claimed employer abroad, we could not determine whether or not the foreign employer and the Petitioner have a qualifying relationship. We further determined that the Petitioner had not submitted sufficient evidence to establish the facts of its ownership. Specifically, we found that the Petitioner did not demonstrate the Beneficiary's claimed 60% ownership of the Petitioner, noting that the Petitioner submitted incomplete membership certificates, among other deficiencies. Finally, we alerted the Petitioner that even if the record supported the Petitioner's claim regarding its ownership, the Petitioner had not shown or asserted that the Beneficiary had a majority interest in or control over either of the claimed foreign employers, and therefore, a qualifying affiliate relationship does not exist.

On motion, the Petitioner submits additional evidence regarding the Beneficiary's foreign employment. The Petitioner appears to be claiming that the Beneficiary was employed by the Indian entity as well as the entity in [REDACTED]. As evidence of the Beneficiary's employment with the Indian entity, the Petitioner submits payroll documents showing wages paid to the Beneficiary from April 2011 to March of 2015. The Petitioner also submits personal profit and loss statements for the Beneficiary reflecting that the Beneficiary received wages from the Indian entity in the fiscal years ending March 31, 2012; March 31, 2013; March 31, 2014; and March 31, 2015.

We find that the payroll documentation is sufficient to establish the Beneficiary's employment with the Indian entity. Regarding the [REDACTED] entity, the profit and loss statements also state that in the fiscal year ending March 31, 2015, the Beneficiary received a profit share from [REDACTED]. The Petitioner has not provided any other documentation to substantiate the claims of employment with the [REDACTED] entity or an explanation as to why payroll document, paystubs, bank statements, or any other independently verifiable evidence is available to serve as proof of the Beneficiary's employment. The unsigned, unaudited, personal profit and loss statement is not sufficient to meet the Petitioner's burden of proof in these proceedings to establish employment with the [REDACTED].

Although the Petitioner submits sufficient evidence to establish the Beneficiary's employment with the Indian entity, the Petitioner has not established the true facts of its ownership or that either foreign entity has a qualifying relationship with the Petitioner. While the Petitioner submits additional membership certificates on motion, this evidence is insufficient to establish ownership of the Petitioner.² Specifically, the Petitioner submits its membership certificates numbers four through thirteen, reflecting that the Beneficiary owns 60% of the Petitioner as of February 25, 2015.

² The 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 for purposes of this visa classification. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); see also *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). In the context of this visa petition, 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.

Matter of P-, LLC

However, the Petitioner previously submitted membership certificates numbers one through three, which as noted in our prior decisions, did not reflect the assignment of any specific number of shares to any of the named individuals. Because the Petitioner did not provide an updated ledger or other record, it is unclear if the prior certificates were cancelled, transferred, or amended. Without such information we are unable to understand the Petitioner's current ownership structure through all thirteen issued membership certificates. Additionally as stated in our appeal decision, membership certificates alone are not sufficient to establish ownership. In our decision we outlined the other types of documentation that were necessary to fully evaluate the Petitioner's ownership, stating:

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The Petitioner does not submit any such documentation on motion. The Petitioner has now had three opportunities to submit additional corporate documentation to substantiate its ownership as of the date of filing, including an RFE issued by the Director, on appeal, and now in support of the current motion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, the Petitioner does not address the finding that, even if it had established the Beneficiary's ownership of the Petitioner, the Beneficiary's minority ownership of either foreign entity³ does not constitute ownership and control of the entities, and thus does not meet the

³ According to the evidence of record, the Beneficiary owns 35.86% of the Indian entity and 16% of the [REDACTED] entity.

(b)(6)

Matter of P-, LLC

requirements to establish an affiliate relationship between either the [REDACTED] entity or the Indian entity and the Petitioner.⁴

As stated above, the Petitioner has not established a qualifying relationship with either entity regardless of the Beneficiary's employment status. The Petitioner has not submitted new evidence to overcome our previous finding.

III. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The next issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial or executive capacity.

Although this issue was not addressed by the Director, we determined on appeal that the evidence of record did not establish that the Beneficiary was employed in a managerial or executive capacity with the foreign employer. The Director issued an RFE, instructing the Petitioner to supplement the record with a detailed percentage breakdown listing the Beneficiary's foreign job duties and the times allotted to each item on the list. The Director also asked the Petitioner to provide the foreign employer's organizational chart illustrating the entity's staffing structure and the Beneficiary's placement therein. We found that the Petitioner did not provide the requested evidence and that the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. The Petitioner did not address this issue on motion.

We note that the Petitioner has had several opportunities to submit additional corporate documentation to substantiate its ownership as of the date of filing. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165. The Petitioner has not submitted new evidence to overcome our previous finding.

IV. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The last issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in a managerial or executive capacity, as defined at sections (101)(a)(44)(A) and (B) of the Act, under the new office petition. Upon review of the additional evidence and assertions provided on motion, the Petitioner has not established that the Beneficiary will act in a managerial or executive capacity within one year of approval.

⁴ On appeal, the Petitioner claimed that it had a qualifying relationship with the two foreign entities by virtue of the Beneficiary's majority ownership, or in the alternative, by virtue of being owned by the same group of individuals. As was noted in our appeal decision, the Petitioner claims that the Beneficiary is one of three owners of the Petitioner, one of five owners of the [REDACTED] entity, and one of 36 owners of the Indian entity. We found that the companies are plainly not "owned and controlled by the same group of individuals," with "each individual owning and controlling approximately the same share or proportion of each entity," as is required by 8 C.F.R. § 214.2(I)(1)(ii). The Petitioner does not refute this finding on motion.

(b)(6)

Matter of P-, LLC

Although this issue was not addressed by the Director, we determined on appeal that the evidence of record did not establish that the Beneficiary would be employed in a managerial or executive capacity. We noted that the Petitioner initially submitted a broad job description, and did not comply with the Director's RFE, which included requests for the following: a statement describing the proposed nature of the new business, the scope of the entity, its organizational structure and financial goals, and evidence of the foreign entity's financial ability to pay the Beneficiary and commence doing business in the United States.

On motion, the Petitioner submits copies of a letter from [REDACTED] and [REDACTED] both claiming to be the Petitioner's parent company, and both claiming to "expand their business in the United States of America." The letters are otherwise almost identical. The letters state that the Petitioner had initial capital of \$200,000 and additional capital of approximately \$500,000 available at the [REDACTED] in [REDACTED]. The Petitioner has not provided any evidence of this claim. The letters also provide a list of generalized duties, but do not provide any specifics of what duties the Beneficiary will actually be performing on a day-to-day basis. The Petitioner submits general details regarding the Beneficiary's planned position description and information regarding the new office operations. The Petitioner did not provide any details regarding the planned organizational structure, personnel plan, details regarding anticipated capital start-up costs, financial goals, or details regarding how the Petitioner intends to use the claimed funds of \$200,000 start a chain of "[REDACTED] shops," and have "at least ten locations of [REDACTED] outlets in the next four years." Overall, the information provided by the Petitioner is almost completely devoid of any details or evidence regarding the planned new office operations in the United States. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165.

Here, the Petitioner had the opportunity to supplement the record in response to the Director's RFE, on appeal, and now again on motion, but it has not provided sufficient evidence to establish that the Beneficiary will be employed in a managerial or executive capacity in the United States. The Petitioner has not submitted new evidence to overcome our previous finding.

V. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of P-, LLC*, ID# 17680 (AAO July 18, 2016)