U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-T-, INC.

DATE: APR. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an IT services provider, seeks to temporarily employ the Beneficiary as its sales director 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 of the California 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.

On appeal, the Petitioner further explains the nature of its qualifying relationship, pointing to various corporate documents to support its claims. The Petitioner also points to errors in the Director's analysis, contending that even though the Director acknowledged that the Petitioner is the parent in a parent-subsidiary relationship with the Beneficiary's foreign employer, the petition was nevertheless denied because the Director determined that the two entities are not owned by the same group of individuals and therefore do not have an "affiliate" relationship.[1]

Upon *de novo* review, we find that the Petitioner submitted sufficient evidence to establish that it and the Beneficiary's employer abroad have a parent-subsidiary relationship as claimed. Although the Director correctly determined that there is insufficient evidence establishing that the two entities meet the definition of the term "affiliate," the Petitioner has shown that it has a qualifying relationship with the Beneficiary's employer abroad as the Petitioner owns the majority of the foreign entity's stock and is therefore the parent in a parent-subsidiary relationship with the 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., one entity with "branch" offices), or related as a "parent and

[1] The term "affiliate" is defined, in relevant part, as (1) one of two subsidiaries both of which are owned and controlled by the same parent or individual, or (2) one of two legal entities owned by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

subsidiary" *or* as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). Neither the Act nor the regulations require the Petitioner to establish that it meets more than one of these definitions. The Director imposed an undue burden upon the Petitioner by requiring it to establish that it meets the definition of "affiliate," despite acknowledging that the Petitioner and the Beneficiary's foreign employer have the requisite parent-subsidiary relationship. Therefore, the Director's decision must be withdrawn.

Notwithstanding the Director's error, we find that the record as presently constituted does not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity as claimed. The Beneficiary's job description and the Petitioner's staffing structure do not adequately demonstrate that the Beneficiary will primarily perform managerial or executive duties. Although the Petitioner claimed five employees at the time of filing and indicated that the Beneficiary will manage five subordinates, it is unclear who the five U.S. employees are. The Petitioner's organizational chart shows that two of the Beneficiary's subordinate positions were vacant at the time the petition was filed and the three remaining subordinate positions – a deputy director of marketing, an "MIS" employee, and a "manager quality" – are located in India and thus would not perform their respective job duties at the Beneficiary's place of work. The Petitioner did not explain how the Beneficiary would carry out his managerial tasks on a daily basis with no support staff in the United States. Further, it is unclear who would carry out the duties that would normally be assigned to the account manager and business head positions, which were vacant at the time of filing. In light of these anomalies we cannot conclude that the Petitioner provided sufficient evidence to establish that the Beneficiary would be employed in a managerial or executive capacity.

Accordingly, we hereby withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. The Director should request any additional evidence deemed necessary to determine the Petitioner's eligibility and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of I-T-, Inc.*, ID# 1161692 (AAO Apr. 12, 2018)