U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Z-I-, INC.

DATE: AUG. 25, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a business information provider, seeks approval of a blanket petition to facilitate the transfer of future beneficiaries under the L-1 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-1 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, executive, or specialized knowledge capacity.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has three or more domestic or foreign branches, subsidiaries, or affiliates. Specifically, the Director found that the Petitioner had not established a qualifying relationship with its sole claimed foreign affiliate. Further, the Director determined that one of the Petitioner's claimed domestic offices did not qualify as a branch of the petitioning company.

On appeal, the Petitioner submits additional evidence and asserts that it has the requisite qualifying relationship with the foreign entity in question. The Petitioner maintains that it has a foreign affiliate and one U.S. branch office, and has otherwise satisfied all requirements for approval of an L-1 blanket petition.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial, executive, or specialized knowledge capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(4)(i) states that a petitioner may file a blanket petition to seek continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as

qualifying organizations if: the petitioner and each of those entities are engaged in commercial trade or services; the petitioner has an office in the United States that has been doing business for at least one year; the petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and, the petitioner and the other qualifying organizations have obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge professionals during the previous 12 months, or have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million, or have a United States work force of at least 1,000 employees.

The Petitioner must provide evidence that all entities for which approval is sought are qualifying organizations. 8 C.F.R. § 214.2(l)(4)(iv)(B). 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").

An "affiliate" is defined 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 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. § 214.2(l)(1)(ii)(L).

The definition of "subsidiary" includes a legal entity in which a parent owns, directly or indirectly, less than half of the entity, but in fact controls the entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

II. ANALYSIS

At issue in this case is whether the Petitioner established that it has three or more domestic and foreign branches, subsidiaries, or affiliates. The Petitioner's list of qualifying entities includes the Petitioner itself, a Michigan branch office, and an Israeli entity.[1]

The Petitioner claims to have a qualifying affiliate relationship with the Israeli company, which wholly owns. The Petitioner claims that who is the Petitioner's CEO, founder, and chief scientist, owns less than half of the petitioning entity, but has a controlling interest in the company, thereby establishing an affiliate relationship based on ownership and control of both entities by the same individual.

As evidence of the ownership and control of the petitioning company, the Petitioner initially submitted: a detailed ownership affidavit from its corporate legal counsel; a copy of its capitalization table; stockholder proxies executed by members of the family giving all voting rights; the company's second restated certificate of incorporation, which describes

[1] The Petitioner submitted an amended list of entities in response to a Request for Evidence (RFE), which included another branch office in New York. The Director determined that this fourth office did not qualify as a branch and the Petitioner has raised no objection to that finding. The Petitioner has established that it has a qualifying branch office in Michigan.

the company's five types of common and preferred stock and respective voting rights; and, a copy of its 2015 corporate tax return.

In his affidavit, stated that the family collectively owns approximately 36% (a plurality) of all classes of voting stock issued by the Petitioner, as well as 94% of Series A Common Stock. Pointing to the voting provisions found in the company's certificate of incorporation, emphasized that whoever controls a majority of the Series A Common Stock is able to make all corporate governance decisions for the company and in fact controls the company. Finally, explained that due to the shareholder proxies granted to him, has the unqualified right to vote all of the shares held by members of his family.

The Director found that the capitalization table submitted at the time of filing and the Petitioner's tax return both contained information that appeared to be inconsistent. In response to the RFE, the Petitioner provided a corrected capitalization table with another detailed affidavit from He explained that the initial table contained clerical errors, and also explained the discrepancies in the Petitioner's tax return based on information provided by the company accountant.

In denying the petition, the Director found that the Petitioner had made material changes to the capitalization table and therefore did not overcome the concerns raised in the RFE. The Director concluded that the Petitioner did not establish a qualifying relationship with the Israeli company.

Upon review, we disagree with the Director's determination. The Petitioner correctly notes on appeal that the Director did not acknowledge the detailed and credible explanation submitted by who clarified why changes were made to the capitalization table in response to the RFE. The Petitioner also submits another affidavit from on appeal, who once again explains the voting rights vested with including the special voting rights conveyed by the Petitioner's Class A Common Shares.

Due to concerns regarding the capitalization table, the Director did not reach a clear determination as to whether partial ownership and majority control over the Petitioner's Class A Common Shares is sufficient to establish his control of the company. After reviewing the relevant evidence, we find that the Petitioner has met its burden to show that has sufficient ownership and control of the petitioning company to establish an affiliate relationship with the Israeli entity. The Petitioner has satisfied all requirements for approval of its blanket L petition.

III. CONCLUSION

The Petitioner has established that it has three or more domestic and foreign branches, subsidiaries, or affiliates, and that all entities for which blanket approval is sought are qualifying organizations.

ORDER: The appeal is sustained.

Cite as *Matter of Z-I-, Inc.*, ID# 695263 (AAO Aug. 25, 2017)