U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-&M-[redacted]

DATE: FEB. 5, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a [redacted]-based law firm which lends its name to over 70 law firms and other entities worldwide. It filed a blanket petition to designate all of these associated firms as qualifying entities for future L-1 intracompany transferee petition filings. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The approval of a blanket L petition recognizes a qualifying relationship between a United States employer and its parent, branches, subsidiaries, and affiliates.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the law firms sharing the Petitioner's name qualify as affiliates.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by not considering all applicable law. Much of the appellate brief directly repeats language from the Petitioner's earlier response from a notice of intent to deny the petition.

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

I. LEGAL FRAMEWORK

A United States employer may file a nonimmigrant petition for an intracompany transferee to work in a capacity that is managerial, executive, or involves specialized knowledge." Section 101(a)(15)(L) of the Act. The beneficiary of such a petition must have worked for one continuous year during the three preceding years for the same employer or a subsidiary or affiliate thereof in a qualifying capacity. *Id.*

Under certain conditions, a petitioner seeking the classification of beneficiaries as intracompany transferees may file a blanket petition with U.S. Citizenship and Immigration Services (USCIS), seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations. 8 C.F.R. § 214.2(l)(4)(i). Under the blanket petition process, USCIS is responsible for determining whether the petitioner and its parent, branches, affiliates, or subsidiaries specified are qualifying organizations. 8 C.F.R. § 214.2(l)(1)(i).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L) provides three definitions for the term "affiliate":

(*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, or

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

II. QUALIFYING RELATIONSHIP

In this case, the Petitioner does not claim a qualifying relationship with any foreign entity based on ownership. Instead, the Petitioner asserts that its associated law firms qualify as affiliates under the third definition cited above. The Petitioner is the founding firm of organized as a Swiss Verein, which the Petitioner defined as "an association of independent legal entities, organized under Swiss law for specifically defined purposes, that markets its services under the same internationally recognized name." The Petitioner asserted that "there are specific "umbrella" organizations that provide services and oversight to the Swiss Verein as a whole etc.)."

The Director denied the petition because the cited regulation requires the partnership to have been "organized . . . to provide accounting services," which the Petitioner does not provide. On appeal, the Petitioner states that the Director did not give full consideration to a 1999 statutory amendment that expanded the definition of a qualifying partnership.

Specifically, section 6 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), amended section 206(a) of the Immigration Act of 1990 (IMMACT 90), 8 U.S.C. § 1101 note, to refer to "a partnership that is organized in the United States to provide accounting *or* management consulting services" (emphasis added). The Petitioner asserts that it provides management consulting services, and therefore qualifies under the broadened definition.

We disagree, for the reasons explained below.

The Petitioner's argument rests on the wording of section 6 of Pub. L. 106-95. The Petitioner states:

> Senator Hatch, the drafter of the legislation, explained the rationale for the clarifying language:
>
> > My amendment will make sure that any international management consulting firm that **separates from an international accounting firm, yet continues to maintain the qualifying worldwide structure, may continue to use the L visa even if it is no longer connected to an accounting firm.** Thus, no new category of beneficiaries may use the L visa.
>
> 145 Cong Rec S 13064, Vol. 145, No. 145 (October 22, 1999).[1]

(Petitioner's emphasis.) Statutory interpretation begins with the language of the statute itself. *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552 (1990). Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). The Petitioner has not shown that the statutory language lacks clarity.

Even if the statutory language were ambiguous enough to require reference to the legislative history in order to determine legislative intent, the quoted language does not support the Petitioner's argument. In this case, reliance on legislative intent beyond the language of the statute results in a narrower, rather than broader, applicability of the 1999 statutory amendment.

Senator Hatch did not intend to broaden eligibility to Swiss Vereins outside of the accounting industry; rather, he asserted that the 1999 technical amendment would benefit "no new category of beneficiaries." Senator Hatch was plainly referring not to management consulting firms in general, but specifically to those which had "separate[d] from an international accounting firm." In additional comments that the Petitioner omitted from its quotation, Senator Hatch repeatedly and unmistakably referred to "management consulting businesses" that are "related" or "associated" with "international accounting firms." This is entirely in keeping with the subtitle of section 6 of Pub. L. 106-95, "Further Clarification of Treatment of Certain International Accounting Firms."

The Petitioner states, on appeal, that "Management Consulting is the Core Aspect of [redacted] This assertion, to be discussed below, deviates from the Petitioner's strategy at the time of filing. Initially, the Petitioner did not cite or rely on the amended language of section 206(a) of IMMACT 90. Instead, the Petitioner acknowledged that the regulatory definition is limited to accounting firms, but the Petitioner maintained that the intent behind the legislation "was to ease the international exchange of professional personnel employed by well-established international firms that would not otherwise qualify for the L visa category based on their ownership structures." The Petitioner stated:

---

[1] *Sic.* The quoted passage actually appears on page 13065.

> provides professional services through its member firms. While the Firm does not provide accounting-specific services as noted in 8 CFR 214.2(l)(1)(ii)(L)(3), it does provide professional legal services that also include the managerial and consulting services described in the regulations. Because the intent of this regulation is to allow the movement of professional personnel among the member firms of an internationally recognized and marketed organization, by confirming that legal services are substantially similar to other professional services such as accounting, managerial, and consulting services, the policy goals of the L-1 regulations would be advanced.

Notwithstanding the Petitioner's claim that "legal services are substantially similar to other professional services such as accounting, managerial, and consulting services," attorneys and management consultants perform different roles, with different skill sets and different career preparations and credentials. Legal advice may influence a client's business and the decisions of the client's management, but it does not follow that, by providing that advice, an attorney or law firm is thereby acting as a "management consultant."

The Petitioner submitted promotional materials and a midyear update from 2015, intended to establish the scope and reputation of the global law firm (to meet other blanket petition requirements). These materials did not indicate that the global firm or any of its constituent law firms provide management consulting services, or that the firm presents itself to the public and to potential customers as a management consulting firm.

The wording of the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*3*) does not take into account the 1999 statutory amendment regarding management consulting services. USCIS must take all relevant statutes into consideration, and in this sense the existing regulation is not the final word. Nevertheless, Congress did not provide similar language for law firms when it first enacted IMMACT 90 or when it amended that statute in 1999. The Petitioner initially contended that we should construe the clause broadly to encompass any kind of business partnership with a Swiss Verein-type organizational structure. USCIS, however, lacks the authority to make so sweeping an interpretation beyond the plain statutory language. Congress did not cite accounting firms and management consulting services as *examples* of the *type* of business arrangement entitled to special consideration. Rather, it *limited* consideration to those specific businesses.

Following the issuance of a notice of intent to deny the petition, and again on appeal, the Petitioner has claimed to be "a qualifying organization that provides management consulting services."

The Petitioner observes that there is no definition of "management consulting services" in the regulations or case law, and stated: provides management consulting services as defined by Black's Law Dictionary and the O*NET Classification." *Black's Law Dictionary* does not define "management consulting services." The Petitioner cited, instead, the separate definitions of "management" and "consultation."

The absence of a regulatory definition of "management consulting services" does not mean that we must construe the term to refer to any kind of consultation that involves management. Rather, management consulting is a distinct line of business, with credentials, preparation, and career trajectory that differ from those found in the practice of law. Some attorneys provide legal advice to business managers, but this does not make them management consultants.

Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l Bhd. of Elec. Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case, it is the intention of the legislators rather than the strict language that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

O*NET is an online database of occupational information sponsored by the Department of Labor; its web address is https://www.onetonline.org/. O*NET's listing for "Management Analysts" includes management consultants. The Petitioner quoted O*NET's summary description of a management analyst's job duties: "Conduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively."

The Petitioner states that its services conform to O*NET's description of management analysts and consultants, because "[i]It is part of our regular, daily practice to advise the management of small, medium, and large corporations to evaluate, design systems, and prepare manuals, presentations, and written and oral advice to assist our clients in operating more efficiently and effectively and, ultimately, to achieve their goals."

In the above quotation, the Petitioner did not state that it performs the tasks of a management consulting service. Rather, it "advise[s] the management of . . . corporations" regarding the performance of some of the listed functions. Furthermore, a closer look at O*NET's listing for management analysts does not support the assertion that a law firm acts as a management consulting service for its corporate clients. Beyond the capsule description quoted by the Petitioner, O*NET lists 10 tasks performed by management analysts:

> Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes.
>
> Interview personnel and conduct on-site observation to ascertain unit functions, work performed, and methods, equipment, and personnel used.
>
> Analyze data gathered and develop solutions or alternative methods of proceeding.

> Plan study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis.
>
> Confer with personnel concerned to ensure successful functioning of newly implemented systems or procedures.
>
> Gather and organize information on problems or procedures.
>
> Prepare manuals and train workers in use of new forms, reports, procedures or equipment, according to organizational policy.
>
> Review forms and reports and confer with management and users about format, distribution, and purpose, identifying problems and improvements.
>
> Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program.
>
> Design, evaluate, recommend, and approve changes of forms and reports.

The Petitioner has not produced any evidence to show that its employees perform any of the 10 listed duties for its client companies. The 10 listed duties do not overlap with the 22 duties listed on O*NET's "Lawyers" page.

When reading or interpreting a statute, we are expected to give the words used their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). We are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. *See, e.g., K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

Because management consulting exists as its own occupation, independent of the practice of law, we must assume that the language of the statute refers to management consultants, rather than people in other fields who, in the course of their work, consult with managers.

On appeal, the Petitioner also asserts that its employees perform "a number of duties for management consultants include in the [Occupational Outlook] Handbook," such as "[g]ather and organize information" and "[d]evelop solutions or alternative practices." Like O*NET, the Handbook distinguishes between lawyers and management analysts/consultants. Each occupation involves providing advice and assistance to clients in the business world, but these broad similarities do not make them essentially the same occupation. We note that the Handbook lists "Similar Occupations" for management analysts/consultants; attorneys are not on that list. Likewise, the

Handbook's listing for "Lawyers" does not list management analysts/consultants among "Similar Occupations."

Here, again, the Petitioner seeks to conflate the act of providing consultation to management with the specific occupation of management consulting. This attempt rests not on any concrete evidence in the record, but on the lack of a regulatory definition of "management consulting."

The Petitioner states that, in addition to many local law firms, "there are specific 'umbrella' organizations that provide services and oversight to the Swiss Verein as a whole." One of those entities is [redacted] But the record does not establish what type of consulting that entity provides, or to whom it provides it. Even if [redacted] provides management consulting to outside clients, that would not make the entire [redacted] organization "a partnership that is organized . . . to provide . . . management consulting services."

By making specific provision for management consulting services but not for law firms, Congress drew a distinction between the two types of business. We lack the authority to overrule Congress and erase that distinction. The regulations do not define "management consulting service," but nevertheless management consulting exists as a specific occupation. The lack of a regulatory definition does not require us to ignore this fact in favor of the Petitioner's contention that a law firm that works with corporate clients is therefore a "management consulting service."

The statutory provisions, taken together, do not apply to all Swiss Vereins or to law firms. They apply only to accounting services and to management consulting services that are currently or formerly affiliated with accounting services. The Petitioner has not established that its associated firms fall under these categories.

III. CONCLUSION

The Petitioner has not established a qualifying relationship between the entities grouped together under the blanket L petition.

ORDER: The appeal is dismissed.

Cite as *Matter of B-&M-* [redacted] ID# 898611 (AAO Feb. 5, 2018)