U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-P-Y-I-, INC.

DATE: JULY 31, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of yoga instruction, seeks to temporarily employ the Beneficiary as a regional director under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding that the Petitioner was not authorized to operate a branch office in Canada. Thus, the Director determined that the Beneficiary was not employed by a qualifying organization abroad.

The matter is now before us on appeal. The Petitioner submits additional evidence and asserts that the Beneficiary was employed by a qualifying organization in Canada.

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

I. LEGAL FRAMEWORK

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

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(l)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

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 subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation at 8 C.F.R. § 214.2(1)(1)(ii)(J) states that a branch is an "operating division or office of the same organization housed in a different location."

II. QUALIFYING ORGANIZATION

The issue to be addressed in this decision is whether the Beneficiary was employed abroad by a qualifying organization. Specifically, the Petitioner must establish that the Beneficiary was employed abroad by a firm, corporation, or other legal entity that meets the definition of a parent, branch, affiliate, or subsidiary. *See* 8 C.F.R. § 214.2(l)(1)(i) and the definitions of the respective terms at 8 C.F.R. § 214.2(l)(1)(ii).

In its supporting letter with the petition, the Petitioner stated that its headquarters are located in Utah and that it "offers world-class yoga instruction." It stated that it had five employees[1] and that it "offers its programs through its own studios as well as partner studios located throughout the U.S. as well as events organized worldwide." The Petitioner further asserted that it has an operating division in Canada with five "staff members, who are contractors, on its payroll." It stated that the staff members, including the Beneficiary who has been employed as a programs team coordination since April 2015, "perform their duties from remote locations" and "receive assignments and take directions directly from [the Petitioner] in the U.S., which… exercises control over their work, as well as control over the details of what services they provide and how the services are performed."

The Director issued a request for evidence (RFE) requesting that the Petitioner provide additional documentation to establish the existence of a qualifying organization abroad. In response to the Director's RFE, the Petitioner stated that its foreign entity is a branch that is not legally distinct from its U.S. entity. It stated that the foreign entity has five staff members whose salary is paid directly by the Petitioner and whose work is controlled by the Petitioner.[2] It stated that the staff members perform duties assigned to them from remote locations.

[1] On the petition, it listed only two employees. The Petitioner must resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[2] The Petitioner also asserted in response to the RFE that the Beneficiary qualifies as a "common-law employee." However, the attorney's letter submitted on appeal states that she is a contractor. Because the Petitioner has not established that the existence of a qualifying organization, we reserve the issue of whether the Beneficiary is an employee of the Petitioner.

The Director denied the petition because the Petitioner did not establish the existence of a qualifying organization abroad. On appeal, the Petitioner asserts that "it is inappropriate for USCIS to enter into questions of Canadian law and regulations about which it cannot have expertise" and that it is "free to engage the services of and compensate its remote, home-office based workers in Canada without formal registration." It submits a letter from a Canadian attorney indicating that "five Canadian contractors provide professional services" to the Petitioner; that the Petitioner has a separate written agreement with each contractor; that each contractor provides a "different scope of services" to the Petitioner; that the contractors are independent contractors and not agents of the Petitioner; that the contractors invoice the petitioner separately for their services; and that none of the contractors are required to work exclusively for the Petitioner. The attorney further states that the Petitioner does not own or rent real estate in Canada; it does not store inventory in Canada; it does not list a telephone number or business address in a Canadian phone directory; it has not held events in Canada; and it does not do any direct advertising within Canada. The attorney concludes that the Petitioner "does not need to extraterritorially register operations in Canada solely on the basis that it contracts for services from a Canadian contractor when that contractor is expressly not to act as an agent for the [Petitioner]."[3]

Here, the Petitioner has not established by a preponderance of the evidence that the Beneficiary was employed abroad by a qualifying organization. We disagree with the Petitioner that the remote, home-office based workers in Canada constitute a qualifying organization and "branch." As explained below, the Beneficiary's foreign employer is neither a legal entity nor a branch office sharing common ownership and management with the Petitioner.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are qualifying organizations. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as a "United States or foreign firm, corporation, or other legal entity" satisfying the three conditions listed at 8 C.F.R. § 214.2(l)(1)(ii)(G)(*1*)-(*3*). One of those three conditions is "[m]eet[ing] exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." 8 C.F.R. § 214.2(l)(1)(ii)(G)(*1*). The regulations define "branch" as "an operating division or office of the same organization housed in a different office." 8 C.F.R. § 214.2(l)(1)(ii)(J). To establish that it is a branch office in the United States, a petitioner must demonstrate that it is bound to the foreign entity through common ownership and management. *Matter of Schick*, 13 I&N Dec. 647 (Reg'l Comm'r 1970). Likewise, a United States company may file a nonimmigrant petition for an intracompany transferee who has been employed abroad by a branch office of the company, provided that the foreign branch office meets these same requirements in the country or countries in which it operates. Generally, probative evidence of a foreign branch office would include the following: a business license establishing that the petitioner is authorized to engage in business activities in the country in which it claims to operate; copies of U.S. and foreign tax returns and wage reports; copies of a lease for office space in a foreign country; and any relevant local tax forms or documents that demonstrate that the petitioner is a branch office of a U.S. entity.

[3] The letter does not address the Petitioner's tax obligations in Canada, and the record does not contain any Canadian tax returns for the Petitioner.

In this case, the Petitioner has provided no evidence establishing that its purported branch office is a foreign firm, corporation, or other legal entity. Further, the evidence that it did submit leads to a conclusion that the purported branch office is not a "branch," as defined by the regulations. *See* 8 C.F.R. § 214.2(l)(1)(ii)(J). The Canadian attorney referenced above states that the Petitioner engaged independent contractors who are not agents of the Petitioner and that none of the contractors are required to work exclusively for the Petitioner. As mentioned above, the attorney also states that the Petitioner does not own or rent real estate in Canada; it does not store inventory in Canada; it does not list a telephone number or business address in a Canadian phone directory; it has not held events in Canada; and it does not do any direct advertising within Canada Also, there is no evidence establishing that the Petitioner is authorized to engage in business activities in Canada; it contains no Canadian tax returns; it does not contain a copy of a lease for office space in Canada; and it does not contain any other relevant local tax forms or documents that demonstrates the independent contractors constitute an operating division or office of the Petitioner in Canada. There is also no evidence that the Canadian "branch office" is bound to the Petitioner through common ownership and management. *Matter of Schick*, 13 I&N Dec. at 649.

To be clear, we are not entering into questions of Canadian law; instead, we are applying applicable United States laws to determine whether the Beneficiary was employed abroad by a qualifying organization. Even if the Petitioner is not required to "extraterritorially register operations in Canada," the Petitioner must submit relevant, probative, and credible evidence to establish that the Beneficiary was employed by a firm, corporation, or other legal entity in Canada that meets the requirements of 8 C.F.R. § 214.2(l)(1)(ii)(G)(*1*).[4] It has not done so here.

The Petitioner has not established the existence of a qualifying organization abroad and, therefore, the petition cannot be approved.

III. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of B-P-Y-I-, Inc.*, ID# 4246260 (AAO July 31, 2019)

[4] The burden of proof is on the Petitioner in the current matter. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In *Chawathe*, the Board of Immigration Appeals pointed to "relevant, credible, and probative" supporting documentation submitted by the petitioner establishing by a preponderance of the evidence that the beneficiary's foreign employer was a subsidiary. *Chawathe*, 25 I&N Dec. at 377.