U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14285235

Date: APR. 08, 2021

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as an owner and operator of a gas station and convenience store, seeks to temporarily employ the Beneficiary as the general manager of its new office[1] in the United States under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in a managerial or executive capacity in the United States within one year. The Petitioner later appealed the Director's decision and we dismissed the appeal. The matter is now before us on a motion to reopen and a motion to reconsider.

On appeal, the Petitioner points to submitted corporate documents filed abroad and contends that these demonstrate that the Beneficiary acted in an executive capacity. Further, the Petitioner submits a U.S. duty description for the Beneficiary and points to its asserted investment in the new business, stating that this demonstrates that he would act in a managerial or executive capacity in the United States within one year.

Upon review, we will dismiss the motion to reopen and the motion to reconsider. The sole issue we will discuss is whether the Petitioner established that the Beneficiary was employed in a managerial or executive capacity abroad. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the other basis of our prior dismissal on appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. MOTION REQUIREMENTS

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A. Motion to Reopen

In support of the motion to reopen, the Petitioner largely resubmits evidence previously provided on the record. However, it does provide some evidence not previously submitted, including a 2019 Declaration of Income filed abroad for the foreign employer and the Beneficiary, a 2014 "Shop Rent Contract" signed by the foreign employer, and a 2020 foreign employer organizational chart with duty descriptions for the foreign employer's claimed employees at the time of the appeal.

In denying the Petitioner's appeal and concluding it did not establish that the Beneficiary was employed in an executive capacity abroad[2], we stated that his duties were overly generic and indicated that it had not submitted sufficient detail and supporting evidence to substantiate his primary performance of executive-level duties abroad. We also that the Beneficiary's duties discussed a "clothing" business not apparently applicable to the Petitioner's claimed computer and electronics business abroad. We further pointed to the discussion of "departments" within the company in the Beneficiary's duties, which did not appear to exist. In addition we indicated that the Petitioner did not submit duty descriptions for the asserted positions subordinate to the Beneficiary abroad and pointed to the fact that there did not appear to be operational level employees to support him and his subordinates abroad, such as store clerks to run its claimed retail location. Lastly, we emphasized the lack of supporting documentation to corroborate the foreign employer's payment of wages and employment of subordinates reporting to the Beneficiary.

On motion, the Petitioner highlights corporate and tax documentation filed abroad and states that this demonstrates the Beneficiary's executive-level position as president. The Petitioner states that the Beneficiary is responsible for "establishing and maintaining the credit worthiness" of the foreign employer, "apply[ing] for credit with…banks and any other lenders," and "preparing the company's corporate financial documents" such as its submitted 2019 declaration of income.

However, the additional evidence and assertions submitted on motion do not overcome our previous conclusions with respect to the Beneficiary's asserted employment abroad in an executive capacity. The Petitioner must prove that the Beneficiary was *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the foreign employer's employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties were be primarily executive, we consider the description of the a beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees

[2] The Petitioner only contends that the Beneficiary was employed in an executive capacity and not in a managerial capacity abroad.

abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role abroad. The Petitioner has still not sufficiently address our conclusion that the Beneficiary's duties were overly generic and the lack of sufficient detail as to these duties, nor has it provided probative supporting evidence of his executive level duties abroad. Although the administrative corporate documentation provided by the Petitioner lists the Beneficiary as its president, this only reflects that he was tasked with, or involved in, filing general corporate paperwork with the state on behalf of the company and does not substantiate his performance of executive-level duties on a day-to-day basis.

For instance, in our previous decision, we stated the Petitioner had provided few examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties abroad, such as banking relationships or lines of credit he managed, contracts he negotiated with wholesalers and dealers, promotions he established, or financial decisions he made. Likewise, we noted that the Petitioner did not adequately detail or document trainings the Beneficiary implemented, debt he reduced, financial rewards he created, annual budgets he set, or policies and procedures he put in place. Vaguely stating on motion that the Beneficiary oversees "credit worthiness," applications for credit, and "corporate financial documents" abroad, as well as submitting a few generic corporate documents, does not sufficiently demonstrate that he devoted his time primarily to executive-level duties abroad. Although we do not expect to the Petitioner to detail and document every executive-level task of the Beneficiary abroad, the lack of these specifics and this supporting documentation leaves substantial uncertainty as to whether he primarily acted in a qualifying role.

In addition, in our previous decision, we also discussed the fact that the Beneficiary's duties mentioned "contractual agreements with wholesalers, and trade dealers for *clothing lines* [emphasis added] for the store." We noted that this industry did not match the foreign employer's asserted computer and office equipment business. Similarly, we pointed to the discussion of "departments" overseen by the Beneficiary, departments which did not appear in the foreign employer organizational chart. The Petitioner does not adequately address these discrepancies on motion, but only vaguely states that the mention of clothing in the duty description was due to the fact that the Beneficiary "was considering establishing a retail clothing store" and this was "currently on hold." This explanation does not address the Petitioner's questionable discussion of non-existent foreign employer departments in the Beneficiary's duties and only leaves further uncertainty as to his foreign duties. For instance, the Beneficiary also appears to discuss businesses that had not yet been pursued, such as the aforementioned clothing business, and it provided few details as to its actual business and his daily activities. Again, the Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the Petitioner has not provided sufficient new evidence on appeal to overcome our conclusions regarding the foreign employer's organizational structure in our appeal decision. For example, we determined the foreign employer's organizational structure was insufficient to support the Beneficiary in a position where he was primarily involved in establishing its goals and policies rather than being involved in its day-to-day operations. In making this determination, we emphasized that the Petitioner did not submit detailed duty descriptions for the Beneficiary's claimed foreign subordinates and that it did not have apparent operational level employees to support him and his asserted subordinates. Likewise, we indicated that the Petitioner did not provide supporting

documentation to substantiate the employment, and payment, of the members of the foreign employer's claimed organizational chart.

Now, on motion, the Petitioner provides generic duty descriptions for the claimed manager, attorney, and accountant it states report to the Beneficiary. However, this is not new evidence for our consideration on motion. Our decision is limited to the evidence in the record at the time of the unfavorable decision. Further, the Petitioner was provided with notice of this deficiency in the Director's request for evidence and did not previously submit this evidence on appeal despite the Director explicitly discussing this material evidence. *See Matter of Soriano,* 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena,* 19 I&N Dec. 533 (BIA 1988). Regardless, even when considered, the provided duties for the Beneficiary's subordinates are similarly generic as those submitted for the Beneficiary and do not sufficiently substantiate their roles.

In addition, the Petitioner submits little evidence to support its employment and payment of wages to its claimed foreign subordinates, as discussed in our previous dismissal decision. Lastly, we also indicated in our prior decision that there were no apparent operational level employees to run the foreign employer's claimed computer and office supply location, such as employees devoted to the sale and service of these items, for instance, store clerks or computer specialists. On motion, the Petitioner now asserts that it also employed "sales staff" or "temporary seasonal workers" to perform these operational duties, individuals not previously mentioned on the record despite a response to a Director's RFE and later evidence and assertions provided in support of the appeal. A petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as an executive position. *See Matter of Michelin Tire Corp.*, l7 I&N Dec. 248, 249 (Reg'l Comm'r l978).

Therefore, the Petitioner has not submitted sufficient new evidence to demonstrate the Beneficiary's eligibility for the benefit sought and overcome our previous dismissal of its appeal. As such, the motion to reopen will be dismissed.

B. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner only discusses errors on the part of "the Director" on motion. However, we have already provided a *de novo* review of the Director's decision and the record, and we dismissed the previous appeal. The Petitioner provided no indication on motion as to why our previous appeal decision represented an incorrect application of law or policy based on the record at that time. Further, we have largely reconsidered this matter in the previous section of this decision and we conclude that our previous decision did not represent an incorrect application of the law based on the record at that time. For these reasons, the motion to reconsider will be dismissed.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown proper cause for reopening or reconsidering our prior decision. The motion to reopen and motion to reconsider will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.