U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M- INC.

DATE: APR. 24, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a management company, seeks to temporarily employ the Beneficiary as the general manager of its new office 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 Vermont Service Center denied the petition concluding that the Petitioner had not established, as required, that it would support the Beneficiary in a managerial or executive capacity within one year of approval. The Director reopened the matter pursuant to the Petitioner's motion to reopen and affirmed the denial of the petition. The Petitioner subsequently filed an appeal, which we dismissed, further finding that the Petitioner did not establish that it had secured sufficient physical premises to house its new office.

In its motion to reopen, the Petitioner submits additional evidence and asserts that its prior counsel was responsible for its deficient submissions, which it claims "did not fully capture the full scope" of its intended U.S. operations and the link between the Petitioner's business and that of its foreign parent entity. The Petitioner contends that it operates as a management and a consultant company and indicates that the latter element was not included in prior submissions.

Upon review, we will deny the motion to reopen.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

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). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original

petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."[1] We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The two issues we will address in this matter are whether the Petitioner established that: (1) it would employ the Beneficiary in a managerial or executive capacity within one year of approval of the petition; and (2) it had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

For the reasons discussed below, we will deny the motion to reopen. While the current motion includes newly submitted evidence, the Petitioner has not shown proper cause for reopening or established eligibility for the requested benefit.

A. U.S. Employment in a Managerial Capacity

An L-1A petition filed on behalf of a beneficiary coming to open a new office must be accompanied by evidence that the beneficiary would have executive or managerial authority over the new office and evidence that the new U.S. operation, within one year of the approval of the petition, will support a managerial or executive position, as defined at section 101(a)(44) of the Act, 8 U.S.C. 1101(a)(44). *See* 8 C.F.R. § 214.2(l)(3)(v).

In dismissing the Petitioner's appeal, we determined that the Petitioner provided a deficient job description that did not fully disclose what actual tasks the Beneficiary would perform within the context of the Petitioner's operation during its first year and beyond. We noted that the Petitioner did not articulate the nature of the "business development" function it claimed the Beneficiary would manage or identify anyone other than the Beneficiary who would perform the underlying duties related to that function. We addressed the Petitioner's response to the Director's request for evidence (RFE), which included the submission of an organizational chart that contained new proposed staffing positions that were not included in the original chart. We deemed the new chart to be indicative of a material change intended for the purpose of making a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). We also observed that the gas station mini marts that the Petitioner was contracted to manage were understaffed and that the Beneficiary would likely be required to participate in their daily operational tasks, performing duties that are outside the realm of what is deemed as being within a managerial capacity.

[1] We note that the Petitioner has resubmitted a number of documents that it previously submitted either prior to the denial or in support of the appeal. While we have reviewed and considered all of the evidence submitted in support of the instant motion, only those documents that were not previously submitted will be specifically addressed in this decision.

We also addressed whether the Petitioner had established its financial ability to hire the three newly proposed employees within its first year of operation, noting that the income the Petitioner would generate from its current management contracts would not be sufficient to cover the Beneficiary's salary of $75,000 per year and the $180,000 in combined salaries that would be paid to the other employees. We also reviewed the federal tax returns of the two businesses the Petitioner was hired to manage and observed that their respective incomes were not sufficient to pay the Petitioner the fees required by the management contracts. In addition, we noted a discrepancy between the Petitioner's claim regarding the amount of funds the foreign entity contributed and the Petitioner's bank account balances, which showed that the Petitioner received approximately $20,000 less than the promised amount.

In sum, we concluded that the record did not present a consistent, credible picture of the Petitioner's organizational structure or the Beneficiary's actual job duties within the organization itself or in relation to the managed companies. We also found that the Petitioner's supporting financial evidence was inconsistent with the Petitioner's claims and did not establish that the Petitioner would be able to support its operations and commence business operations in the United States.

On motion, counsel for the Petitioner contends that prior counsel neglected to properly advise the Petitioner, thereby leading to an incomplete understanding of the Petitioner's business model and the Beneficiary's role within the organization. However, this general claim that the Petitioner's prior counsel was responsible for providing incomplete information is not sufficient to overcome the various deficiencies catalogued in our prior decision. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner has not explained any specific errors or oversights made by prior counsel and does not claim, for example, it has filed a complaint or taken any action against her.

Furthermore, the Petitioner now offers a statement from the Petitioner's "partner/owner," who claims that the Petitioner's management and consulting business was previously described in other submissions. statement also contains several references to the Petitioner's previously submitted business plan. We note, however, that while statement on motion is new, much of the information contained therein is not new and primarily refers to a business plan that was previously submitted and discussed in our prior decision. Further, statement, claiming that the Petitioner's business was "described in great detail in previous filings" is inconsistent with counsel's claim that the prior filings were deficient and did not accurately convey an understanding of the Petitioner's business model.

also claims that the Beneficiary's role "will not be in that of convenience store manager," but rather that he will "will analyze our local market and work to identify undervalued or underperforming businesses," which would be the recipients of the Petitioner's services. However, we previously discussed the Beneficiary's proposed job duties and concluded that the Petitioner did not provide us with sufficient information about the Beneficiary's actual daily tasks such that we could assess what the Beneficiary would actually be doing during the Petitioner's first year of operations and conclude that the job duties he would perform beyond that initial year of operations would be primarily of a managerial. Broadly stating that the Beneficiary would be a leader within

the petitioning organization where he would analyze local markets and identify potential clients is not new information and does not cure the previously mentioned evidentiary deficiencies, which focused on the ambiguities of the Beneficiary's position description. Further, while counsel's statement on motion focuses in part on the foreign entity and its "varied business dealings in India" as a means of establishing that the "Petitioner will also be a diverse management and consulting company," the foreign entity's existing business ventures do not shed light on the Petitioner's business offerings and its ability to meet the business objectives set out in its original business plan.

While counsel claims that the Petitioner's supporting evidence on motion includes documents showing that the Petitioner's foreign parent entity "has taken the necessary steps to transfer the final portion of its initial investment in the Petitioner's business," this claim is unsubstantiated, as the record does not include such documents. The unsupported assertions of counsel do not constitute evidence. *See, e.g.*, *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The Petitioner's submissions on motion do not support counsel's claim regarding the foreign entity's attempt to wire additional funds. In fact, the Petitioner's RFE response statement expressly states that while the foreign entity wired the Petitioner an initial sum of $50,000 to commence business operations, it stated that "[a]dditional funds will be wired . . . as needed." There is no evidence that the foreign entity intended to invest an initial sum of $75,000 as originally claimed or that it actually took steps to wire the balance of the funds, beyond the initial amount, as of the date the petition was filed.

We find that the Petitioner's submissions in support of the motion do not address all of the deficiencies discussed in our prior decision and do not overcome our prior finding that the Petitioner did not establish that at the time of filing it would more likely than not grow to the point where it could support a managerial position within one year of the petition's approval. Therefore, the Petitioner has not established that reopening of this matter is warranted.

B. Sufficient Physical Premises

Next, we will address the issue of sufficient physical premises. An L-1A petition involving a new office must be accompanied by evidence that the Petitioner has secured sufficient physical premises to house the new office prior to filing the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

In dismissing the appeal, we acknowledged that the Petitioner submitted a copy of its lease for an office in Pennsylvania, dated May 4, 2015, in response to the Director's RFE. However, we questioned why the Petitioner did not use this address or submit this lease at the time of filing, or provided evidence that of any other physical premises secured as of that date. In addition, we observed that the Petitioner's bank statements from May 2015 did not indicate that the Petitioner made payments that were consistent with the monthly lease term of $750 plus a security deposit equivalent to one-month's rent.

On motion, explains that the late submission of the lease agreement was "due to a misunderstanding between [the Petitioner] and prior counsel regarding the exact nature of [the

Beneficiary]'s general manager duties in the United States." However, this explanation is insufficient, as the Petitioner does not state the specific nature of the "misunderstanding" or clarify the nexus between submitting a business lease and providing a description of the Beneficiary's proposed job duties. In other words, if a lease had been fully executed as of May 4, 2015, the date it was signed, it is unclear why the Petitioner did not provide it in support of the petition, which was filed 4 days later, on May 8, 2015, or why it did not identify the leased premises as the Beneficiary's work location on the petition itself. Further, despite claiming that the Beneficiary would perform the "vast majority" of his assigned job duties at the leased business premises, does not address or resolve the inconsistency between the address cited in the lease agreement and the one cited in its business plan. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring that the Petitioner resolve inconsistencies in the record by submitting independent, objective evidence).

Further, while the Petitioner submits photographs of the office, it has not addressed our finding that its bank statements for May 2015 did not reflect that the Petitioner had actually paid the first month's rent and security deposit for this office according to the terms of the lease agreement, which would tend to support its claim that it had actually secured the premises prior to filing the petition. Accordingly, the evidence submitted on motion does not overcome our prior determination on this issue.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening as the evidence submitted on motion does not establish eligibility for the requested classification.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-M- Inc.*, ID# 303128 (AAO Apr. 24, 2017)