U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-H- INC.

DATE: APR. 30, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a developer and manufacturer of hydraulic products, seeks to continue the Beneficiary's temporary employment as its "Senior Sales Manager" under the L-1B 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-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 record did not establish, as required, that the Beneficiary: (1) possesses specialized knowledge; (2) has been employed abroad as a manager or executive, or in a specialized knowledge capacity; and (3) will be employed in the United States in a specialized knowledge capacity. The Petitioner subsequently filed a combined motion to reopen and reconsider accompanied by a brief and additional supporting evidence about the Petitioner's products. The Director denied the motion concluding that the Petitioner did not state a clear reason for reconsideration nor stated new facts to warrant reopening. The Director noted that the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. Section 8 C.F.R. § 1003.2(c)(1).

On appeal, the Petitioner contends that the Director overlooked previously submitted evidence and asserts that the brief submitted in support of its previously filed motion pointed to specific errors in the Director's application of law and U.S. Citizenship and Immigration Services (USCIS) policies.

Upon *de novo* review, we find that the Director correctly dismissed the motion to reopen despite having incorrectly cited to a regulatory provision that pertains to motions filed with the Board of Immigration Appeals. Although the Director correctly denied the motion to reopen, we find that the Director did not properly assess the previously submitted evidence and therefore incorrectly denied the motion to reconsider. Therefore, we will remand the matter for further proceedings consistent with our discussion below.

I. MOTION TO REOPEN AND RECONSIDER

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 is based on legal grounds and must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial 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.

The issue before us is whether the Director's decision denying the Petitioner's combined motion to reopen and reconsider was correct. Upon review of the record, we find that the Petitioner did not point to new facts in support of a motion to reopen; therefore, the Director was correct in denying the Petitioner's motion to reopen. However, we find that the Director did not adequately consider the brief submitted in support of the motion to reconsider where the Petitioner correctly pointed to the Director's incorrect application of the provisions of USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015) to the presented set of facts.

In light of the arguments made in the Petitioner's support brief, we find that the Petitioner adequately articulated reasons for reconsideration, thereby warranting that the motion to reconsider be granted so that a decision can be made based on the merits of the submitted evidence.

II. CONCLUSION

The Petitioner adequately articulated reasons for reconsideration, thereby warranting that the motion to reconsider be granted; therefore, we will remand the matter for entry of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to the AAO for review.

Cite as *Matter of S-H- Inc.*, ID# 3158190 (AAO Apr. 30, 2019)