U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-I- INC

DATE: AUG. 9, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a 2-employee information technology company, seeks to temporarily employ the Beneficiary as the deputy marketing officer of its new office[1] under the L-1B 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 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 on multiple grounds. The Director concluded that the Petitioner did not establish that: 1) the Beneficiary acts abroad, or would act in the United States, in a specialized knowledge capacity, 2) the Beneficiary was employed abroad for one continuous year out of the three preceding the date the petition was filed, 3) the Beneficiary's foreign employer was doing business as required by the regulations, 4) it had a qualifying relationship with the Beneficiary's foreign employer, and 5) it had secured sufficient physical premises for its new business.

The Petitioner later filed a motion to reopen and reconsider which was denied by the Director. The matter is now before us on appeal. On appeal, the Petitioner contends that the Director disregarded the specialized and advanced nature of the Beneficiary's duties and a detailed description of her position. The Petitioner further asserts that the Director did not consider submitted documentation relevant to the foreign employer's business operations, such as contracts and media publications.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for

[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).

admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

If a beneficiary is coming in a specialized knowledge capacity to open a new office, the petitioner must submit evidence that it secured sufficient physical premises to house its operation, evidence that the new business entity is or will be a qualifying organization, and evidence that it has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(vi).

II. MOTION REQUIREMENTS

The issue in this matter is whether the Director properly denied the Petitioner's motion to reopen and reconsider.

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, 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). A motion to reconsider 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).

A. Motion to Reopen

We agree with the Director that the Petitioner did not meet the requirements of a motion to reopen. The Petitioner only asserted that the Director disregarded and misinterpreted evidence. The Petitioner neither claimed new facts nor submitted affidavits or other documentary evidence. For this reason, we affirm the Director's denial of the motion to reopen.

B. Motion to Reconsider

A motion to reconsider must establish that the denial 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).

In the initial denial decision, the Director concluded that the Beneficiary's duties appeared to be typical of a marketing manager and compared them to the duties set forth for marketing managers in

the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The Director stated that the Petitioner provided little information regarding the company's asserted proprietary technology in which the Beneficiary was asserted to have specialized knowledge. As a result, the Director concluded that it could not be determined whether the Beneficiary's knowledge was special or advanced when compared to other similar placed marketing employees. The Director also indicated that the Beneficiary's duties were broad and non-specific and determined that they did not demonstrate that her duties were highly developed, complex, or out of the ordinary.

In denying the Petitioner's motion, the Director concluded that the Petitioner did not provide specific reasons for why the initial decision on the merits was incorrect, how or what laws were misapplied, or articulate precedent decisions to support its assertions on motion. The Director emphasized that the petition was denied on several different grounds, and the decision provided a thorough a discussion on each ground for dismissal, and that the Petitioner did not present sufficient assertions to address all the issues in its previous decision.

On appeal, the Petitioner contends that the Director disregarded its descriptions of the Beneficiary's duties and "how specialized and advanced these duties were." The Petitioner asserts that the Director abused her discretion by disregarding the submitted evidence and focusing on the *Handbook's* description of marketing managers. The Petitioner states that the Director did not consider a detailed description of the Beneficiary's "seventeen areas of expertise in the field of marketing."

We concur with the Director's reasoning in denying the motion to reconsider. As correctly noted by the Director, the Petitioner did not sufficiently articulate the Beneficiary's duties abroad or the nature of her knowledge. The Petitioner submitted a generic duty description of the Beneficiary's foreign duties dated in February 2014[2] more than two years prior to the date the petition was filed. As such, the Beneficiary's asserted duties did not appear to specifically apply to her and her specific knowledge and experience, but were just a general outline of the duties of the asserted position formulated at the date of the company's formation. The Petitioner provided no details regarding the Beneficiary's actual knowledge, experiences, training, or accomplishments, such as negotiations she participated in with customers, marketing policies she developed, advertising campaign strategies she implemented, or promotional materials she formulated. In addition, Petitioner did not describe or document advanced marketing technologies she implemented, "burning or important issues" she advised the company director on, or suggestions on staffing and logistical support she provided to the company director. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, the Petitioner indicated that the Beneficiary was "one of the main contributors to the success of our Company's product: proprietary web applications software" and that she had "several years' experience in the technology." However, the Petitioner provided little description or evidence to demonstrate the nature of the foreign employer's products, proprietary web applications software, or

[2] We note that the petition was filed on September 12, 2016

technology. It did not explain the purpose or functioning of these products or applications or how the Beneficiary developed special knowledge of them. In fact, the Petitioner submitted little of the evidence requested by the Director, such as a letter from the Beneficiary's supervisor describing her specialized knowledge abroad, a description of the products, services, tools, or equipment involved, an explanation of why her knowledge is special or advanced, the time required to reach the her level of knowledge, information on her actual training and experience, and an explanation of how her knowledge compared to similarly placed employees within and the company and industry.

Likewise, although the Petitioner appeared to indicate that the Beneficiary had substantial supervisory duties abroad, such as "assigning tasks to employees of her department" and "providing ergonomic working conditions," it provided no information or evidence relevant to her department or subordinates including their names, titles, duties, education levels, and salaries, evidence also requested by the Director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Because "special knowledge" concerns knowledge of the employing organization's products or services and its application in international markets, a petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

However, the Petitioner provided little explanation or evidence to demonstrate the nature of the Beneficiary's knowledge; as such, we cannot determine whether it is distinct and uncommon in comparison to other marketing managers employed in other industries. Certainly, the information technology field is vast as well as the marketing of products within these companies. It is also reasonable to state that there are numerous companies who have developed web applications which are proprietary. However, without sufficient explanation and evidence as to the nature of the web applications software and technology in which the Beneficiary has knowledge, it is not clear how it is special in comparison to numerous other marketing employees involved in various information technology fields.

In addition, a key element that factors into a determination of whether the Beneficiary has "special" knowledge is establishing precisely how and when the Beneficiary obtained the knowledge that is claimed to be "special." However, even if the Petitioner had described the Beneficiary's knowledge, it also did not indicate how she acquired it. Beyond broadly stating that the Beneficiary has several years' experience with the foreign employer's proprietary products, the Petitioner does not outline the process by which she attained her current level of knowledge, such as the products she worked with or the projects she worked on during her foreign employment. The Petitioner claimed that the Beneficiary had a "lasting positive impact" with the foreign employer, but it does not explain why or how.

We also note that determining whether a beneficiary's knowledge is "special" requires a comparison of that knowledge to the knowledge of others who hold comparable positions in the Petitioner's industry. The Petitioner bears the burden of showing that the Beneficiary holds knowledge that is

noteworthy or uncommon compared to her colleagues outside the organization. However, the Petitioner did not compare the Beneficiary's duties to those of other similarly employed professionals at similar organizations. In light of the above, we find that the Director was correct in concluding that the Petitioner did not establish that special knowledge was required to perform the Beneficiary's assigned duties abroad.

The Petitioner also did not establish, in the alternative, that the Beneficiary possesses advanced knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given beneficiary has knowledge of or expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others. Also, as with special knowledge, the petitioner ordinarily must demonstrate that a beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another.

As discussed, the Petitioner did not submit a detailed and current foreign duty description for the Beneficiary, nor did it explain her daily tasks, projects, accomplishments, or the specific nature of her knowledge. The Petitioner only vaguely referred to the foreign employer's proprietary web applications, but did not describe or document them. Further, the Petitioner did not indicate how many in the organization hold the Beneficiary's level of knowledge of its claimed proprietary web applications. Likewise, the Petitioner only provided vague information as to the foreign employer's organizational chart and did not submit any information on the Beneficiary's referenced subordinates or specifically indicate how her knowledge compares to these colleagues within the organization. Therefore, the Director correctly concluded that the Petitioner did not demonstrate that the Beneficiary's knowledge was set apart from the elementary or basic knowledge possessed by others within the organization.

The Director provided a thorough analysis of why the Petitioner did not establish the Beneficiary's specialized knowledge and also correctly denied the petition on four other grounds. For the reasons set forth above, we concur with the Director's conclusion that the Petitioner did not demonstrate that the Beneficiary acts abroad, or would act in the United States, in a specialized knowledge capacity. As the Petitioner was required to overcome all grounds for denial for the motion to reconsider to be granted and the Director thoroughly and adequately addressed these other issues in her initial denial decision, we decline to address them all on appeal.[3] Therefore, the Petitioner did not meet the requirements of a motion to reconsider. For this reason, the appeal must be dismissed.

[3] We also note that the Petitioner does not discuss two of the Director's previous grounds for denial on appeal; namely, whether the Director had erred in concluding that it had not established that the Beneficiary was employed for one year abroad in the three preceding the filing of the petition and whether she was mistaken in determining that it did not

III. CONCLUSION

The appeal must be dismissed because the Petitioner did not establish that the Director's denial of the motion to reopen and reconsider was improper.

ORDER: The appeal is dismissed.

Cite as *Matter of R-I- Inc*, ID# 1214376 (AAO Aug. 9, 2018)

demonstrate that it had qualifying relationship with the foreign employer.