U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-E-, INC.

DATE: AUG. 26, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an exporter of appliances and other goods, seeks to temporarily employ the Beneficiary as its general manager 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 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 did not establish, as required, that the Beneficiary would be employed in a managerial capacity as claimed. The Petitioner subsequently filed an appeal, which we dismissed also determining that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial capacity. In addition, we further concluded that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's former foreign employer.

The Petitioner then filed a motion to reopen, which we denied; however, we withdrew our previous determination that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's former foreign employer.

The matter is now before us again on a motion to reconsider. Upon review, we will deny the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and 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

The issue before us is whether our previous decision to deny the Petitioner's motion to reopen was based on an incorrect application of law or policy and incorrect based on the evidence in the record of proceedings at the time of that decision. 8 C.F.R. § 103.5(a)(3).

In denying the motion to reopen, we concluded that the evidence submitted by the Petitioner was not relevant to establishing the Beneficiary's eligibility at the time the underlying petition was filed in December 2016, as it submitted evidence relevant to the time after the date the petition was filed. *See* 8 C.F.R. § 103.2(b)(1). We also noted that the record did not include corroborating evidence of the Petitioner's staffing levels and structure at the time the petition was filed and we indicated that it did not address the specific deficiencies discussed in our appeal decision. Further, we determined that a revised position description provided for the Beneficiary with the motion to reopen was vague and non-specific and lacked sufficient detail as to the actual duties he would be performing as of the date the petition was filed.

In a brief provided with the current motion to reconsider, the Petitioner contends that we were mistaken in our previous decisions and asserts that the Beneficiary's position "meets the criteria of [a] managerial position." The Petitioner points to *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016) and contends that consistent with this decision we did not consider "the totality of the record and weigh all relevant factors." The Petitioner further asserts that we "overlooked the preponderance of the evidence." The Petitioner states that our appeal decision of July 31, 2018 "should be reconsidered and reversed."

The Petitioner's assertions in the instant motion to reconsider are not sufficient to demonstrate that our February 12, 2019 denial of the motion to reopen was based on an incorrect application of law and policy. As noted in our previous decision, the Petitioner submitted approximately 30 exhibits dating from 2017 and 2018, or relevant to the time after the date the petition was filed in December 2016. Again, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As such, the evidence provided by the Petitioner with the previous motion to reopen was not relevant to determining the Beneficiary's eligibility as of the date the petition was filed. As such, our denial of the motion to reopen on this basis was consistent with the regulations.

Further, we concluded that the Beneficiary's expanded duty description submitted with the motion to reopen was vague and non-specific and did not demonstrate the actual duties he would be performing as of the date the petition was filed. We concur with our previous determination specific to the Beneficiary's expanded duties, as this duty description was indeed vague and the Petitioner submitted little documentation to substantiate his daily qualifying managerial tasks as of the date the petition was filed. The duty description included several generic duties that could apply to any manager acting in any industry and they provided little insight into his actual day-to-day managerial tasks. For instance, the Petitioner did not sufficiently detail or document "strategic plans" the Beneficiary executed on, "short and long term plans" he implemented, "new regulations" he put into operation, or "new investments" he arranged. Likewise, it did not credibly articulate or document "negotiations" the Beneficiary completed, "new alliances to increase international business" he finalized, "financial

decisions" he made, "innovating techniques" he implemented, "company policies and procedures" he updated, or "incentives and promotions plans" he designed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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). Therefore, we conclude that our previous determination that the Beneficiary's expanded duties were overly vague was correct and consistent with law and policy.

On motion, the Petitioner emphasizes that we did not consider "the totality of the record and weigh all relevant factors" and that we "overlooked the preponderance of the evidence." We disagree. In our previous decision in response to the motion to reopen we stated that the record remained "devoid of corroborating evidence of the company's staffing levels and structure at the time of filing" and noted that the submitted evidence did not address the specific deficiencies discussed in our previous appeal decision. As such, contrary to the Petitioner's current assertion on motion, we did consider the totality of the Petitioner's operations and its staffing levels and correctly noted that the new evidence it submitted with the motion to reopen was not relevant to the Beneficiary's eligibility as of the date the petition was filed.

In addition, we also previously issued an appeal decision fully discussing the totality of the evidence and concluding that the Petitioner did not establish by a preponderance evidence the Beneficiary's managerial capacity, including evidence of wages paid to employees in 2016, an organizational chart, or material information regarding his claimed subordinate employees, such as their job titles, duties, and qualifications. We concluded in that appeal decision that the totality of the evidence did not support the Petitioner's claim that the Beneficiary would primarily perform managerial duties. Therefore, we disagree with the Petitioner's assertion that we failed to consider the totality or preponderance of the evidence.

III. CONCLUSION

The Petitioner has not submitted sufficient reasons to demonstrate that our previous decision to deny the motion to reopen was based on an incorrect application of law or policy and incorrect based on the evidence in the record of proceedings at the time of that decision. 8 C.F.R. § 103.5(a)(3). Therefore, the Petitioner has not shown proper cause to reconsider the proceeding.

ORDER: The motion to reconsider is denied.

Cite as *Matter of T-E-, Inc.*, ID# 517317 (AAO Aug. 26, 2019)