U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 3-P-, LLC

DATE: AUG. 30, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, which sells and installs dome projection systems, seeks to temporarily employ the Beneficiary as a projection system installation manager in its new office[1] under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 Vermont Service Center denied the petition. We dismissed the Petitioner's subsequent appeal from that decision, finding that the Petitioner did not establish, as required that it secured sufficient physical premises for its new office operation or that the Beneficiary possesses specialized knowledge and has been employed abroad as a manager or executive, or in a specialized knowledge capacity.

The matter is now before us on a combined motion to reopen and reconsider.[2] On motion, the Petitioner submits additional evidence and contends that the Beneficiary performs and would continue to perform duties that require specialized knowledge. In response to our finding that the record contained inconsistent evidence regarding the new office's physical premises, the Petitioner explains that it decided to relocate the business from New York to California during 2016.

Upon review, we will deny the combined motion to reopen and reconsider.

I. MOTION REQUIREMENTS

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

[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).

[2] Although the Petitioner's motion brief indicates that the brief is in support of a motion to reconsider, the Form I-290B, Notice of Appeal or Motion, indicates that the Petitioner filed a combined motion to reopen and motion to reconsider.

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.

II. ANALYSIS

The issue in this matter is whether the Petitioner has submitted new facts, evidence, or arguments to establish that our decision to dismiss the appeal was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy to the facts of this case. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, July 2016) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For the reasons discussed below, we will deny the motion to reopen and the motion to reconsider. While the current motion includes newly submitted evidence, the Petitioner has not explained the significance of the new evidence nor has it cited precedent case law or specified how we incorrectly applied the law and policy to the facts presented. Accordingly, the Petitioner has not shown proper cause for reopening or reconsideration.

A. Previous AAO Decision

In dismissing the appeal, we first addressed the Director's determination regarding the Beneficiary's specialized knowledge. We determined that the Petitioner did not demonstrate that the Beneficiary's knowledge (1) is not commonly held throughout the particular industry *and* (2) cannot be easily imparted from one person to another. Although we acknowledged that the Petitioner filed a patent application, we found that it did not clarify the Beneficiary's role or show that she possesses or uses specialized knowledge; we noted that using complex equipment does not equate to possessing specialized knowledge. We also observed that the Beneficiary had less than two months of employment with the foreign entity prior to taking the company's internal [redacted] software installation and [redacted] training courses for which the Petitioner claimed at least two years of employment were required.

Next, we addressed statements offered by the Beneficiary's business associate – [redacted] president of [redacted] We found that his input primarily spoke to the quality of the Beneficiary's work and the advantages of using the Petitioner's proprietary software; however, we observed that the Beneficiary used, but did not develop or enhance the software, and questioned how using existing software involves special or advanced knowledge. We also pointed out that the Petitioner is not the only company that provides dome projection services and equipment and found that the Petitioner has not established that its internal tools and methodologies are particularly complex or uncommon compared to similar companies in the same industry. We concluded that the record lacked sufficient evidence to establish that the Beneficiary's combination of experience, work assignments, and knowledge of the Petitioner's methods gave her knowledge that is distinct or

uncommon compared to similarly employed workers in the industry or others within the petitioning company or that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations.

Lastly, we issued a finding beyond the Director's decision, concluding that the Petitioner did not establish that it had secured sufficient physical premises to house its new office. We pointed out that although the petition form indicated that the Beneficiary would work at an address in New York, the Petitioner provided an August 2016 lease agreement indicating that it secured a space in California. We noted that the Petitioner continued to reference the New York address in other documents and in its own website, even though it did not provide evidence to show that it has ever rented, owned, or otherwise controlled the commercial space at that address.

B. Motion to Reopen

On motion, the Petitioner submits a brief and evidence addressing the two issues highlighted in our prior decision regarding the Beneficiary's specialized knowledge and the Petitioner's physical premises as of the date this petition was filed.

1. Specialized Knowledge

In support of the motion to reopen, the Petitioner provides a brief containing a nearly identical position description and an addendum containing a chart that outlines the Beneficiary's duties and points to the duties that are claimed to involve specialized knowledge. We find, however, that the Petitioner's unsupported assertions as to which duties involve specialized knowledge is not sufficient, particularly given our prior consideration of the Beneficiary's job description at the time of the appeal. While we acknowledge the Beneficiary's fluency in the English and Russian languages, the record does not show that this ability is specific to the Petitioner. Further, the Petitioner did not establish that the Beneficiary's bilingual ability distinguishes her from others who are similarly employed within the industry.

The Petitioner also contends that the Beneficiary was directly involved in the process of establishing the foreign entity, which required preparing documents for the "Board of Investment" in Thailand and took two years of "red tape" from the time the documentation process first started in 2011 to 2013, when the company was ultimately established. The Petitioner claims that the Beneficiary spent two years completing the registration process required to set up the foreign entity and asserts that this time period counts towards the two years of employment that the Beneficiary was required to have prior to taking the software installation training. The Petitioner submits a "Board of Investment Application for Promotion" that the Beneficiary signed in June 2011. This document serves only as evidence of the Beneficiary's involvement in the application process, but does not establish that the Beneficiary gained relevant work experience during the process of establishing the foreign entity. The Petitioner does not provide a list of duties that the Beneficiary carried out between 2011 and 2013, nor does it establish how the Beneficiary could have gained work experience from an entity that did not come into existence until 2013. The Petitioner must

support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Although the Petitioner also provided certificates which show that the Beneficiary attended and completed [redacted] and [redacted] training courses in January and August 2014, respectively, we previously determined that completion of these courses does not constitute evidence that the Beneficiary gained specialized knowledge. It is unclear who, other than the Beneficiary, was offered the same courses, or that a certain level of knowledge was required to be eligible for the training. Further, the Petitioner's claim that the Beneficiary completed the coursework "in conjunction with the other duties" leads us to question whether the coursework resulted in specialized knowledge. Although the Petitioner provided a schedule breakdown of the dates and items covered during these trainings, this added information also does not establish that the trainings either resulted in or were evidence of the Beneficiary's specialized knowledge.

Finally, we acknowledge the Petitioner's submission of the foreign entity's organizational structure. However, the Petitioner has not explain why or how information about the company's structure and the Beneficiary's placement within the organization is relevant to our analysis of whether and how she obtained specialized knowledge.

2. Sufficient Physical Premises

Next, we will address evidence regarding the Petitioner's physical premises at the time of filing. 8 C.F.R. § 214.2(l)(3)(vi). As discussed earlier, we noted inconsistencies in the Petitioner's claims concerning the addresses it referenced as its business premises. In support of this motion, the Petitioner explains that it initially intended to set up its business in New York, but pursuant to "further market research and consultant input" changed course and ultimately decided to conduct its business in California. The Petitioner provided share certificates, an operating agreement, and its articles of organization showing that it was originally registered to business in the State of New York, as well as a commercial lease agreement, effective September 1, 2016, showing that it secured a space in California to house its business operation. We note, however, that these documents had been previously submitted and are therefore not considered new evidence.

Furthermore, although we find that the Petitioner has adequately established that it intends to employ the Beneficiary at the California address cited in the lease agreement, it has not provided evidence to show that it had secured a business premises, either in New York or in California, as of July 2016 when this petition was filed. The Petitioner never submitted a lease or other evidence showing that it had secured premises at the work location provided on the petition. In light of the above, we find that the Petitioner has not provided new facts to establish that it had secured sufficient premises in the United States at the time of filing. Further, although the Petitioner has offered some new facts and evidence to address the issue of the Beneficiary's specialized knowledge, it has not shown proper cause to reopen the proceeding.

C. Motion to Reconsider

As noted above, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy. The Petitioner in this matter has not cited to USCIS law or policy in its supporting statement, and has not established that our decision was incorrect based on the evidence of record at the time of our decision. Therefore, it has not shown proper cause for reconsideration.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsidering the prior decision.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of 3-D-P-, LLC*, ID# 1479738 (AAO Aug. 30, 2018)