U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-E-, LLC

DATE: AUG. 31, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a travel services, management consulting, and import and export business, seeks to extend[1] the Beneficiary's temporary employment as its managing member 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. The Director concluded that the Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. The Petitioner appealed the Director's decision and we dismissed the Petitioner's appeal. The Petitioner subsequently filed three combined motions to reopen and reconsider, which we denied.

The matter is now before us again on a fourth combined motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and asserts that we applied "improper standards" when denying the previous motion. The Petitioner contends that the evidence offered in support of this motion warrants approval of the petition and argues that it had sufficient staff to support the Beneficiary in a managerial position and relieve him from having to primarily perform the operational tasks required for the organization's daily function at the end of its initial year of operations.

Upon review, we will deny the combined motion.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf, the validity of which expired on May 9, 2014. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

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). 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).

II. ANALYSIS

The primary focus of this decision is to determine whether the Petitioner has overcome our denial of its third combined motion to reopen and reconsider, where we contemplated whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.[2]

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 and assertions that we incorrectly applied the law and U.S. Citizenship and Immigration Services policy to the facts presented, the Petitioner has not shown proper cause for reopening or reconsideration.

A. Previous AAO Decision

In denying the Petitioner's third motion to reopen and reconsider, we determined that the record on motion did not support a finding that the Beneficiary's duties, at the expiration of the new office petition, would have been primarily of a managerial nature. We found that the Petitioner did not sufficiently clarify the nature of the Beneficiary's duties or establish that such duties would be primarily managerial or executive in nature, although we did not question his level of authority over the company as its senior employee. We noted that the record showed no U.S. employees or contractors who were claimed to be involved in the travel services segment of the business in May 2014 and questioned why the Beneficiary was identified as the booking representative if the India-based director of travels, [redacted] was performing travel-related duties as the Petitioner claims was the case. We found that, contrary to the Petitioner's claims, the record indicates that the Beneficiary was significantly involved in non-managerial duties related to the travel and import-export businesses, not to mention that the Beneficiary was solely responsible for the consulting line of the Petitioner's business, as the Petitioner readily admitted.

[2] As noted, the previously approved new office petition expired on May 9, 2014, and the Petitioner must establish eligibility as of that date.

As in our earlier decisions, we again considered the nature of the Petitioner's business, along with its staffing levels, organizational structure, and stage of development at the end of its initial year of operations. In doing so, we identified multiple discrepancies concerning the employment of [redacted] whom the Petitioner identified as its India-based director of travels, noting that the record was inconsistent as to [redacted] date of hire, his wages, his job title, and his job duties, the latter of which were recently altered to include a subordinate assistant manager who had not been mentioned at any time earlier in these proceedings. Ultimately, while we acknowledged that the Petitioner provided some supporting evidence of [redacted] involvement in its travel services business, we observed that the evidence dated back only to June 2014 and does not establish that he relieved the Beneficiary from providing the company's travel services at the time the Petitioner sought to extend the Beneficiary's L-1A status.

We also questioned the change in [redacted] position title from that of "office manager" to "manager operations" as well as his altered duties, which were amended on motion to include travel-related services as opposed to general office management duties, as previously claimed. We further found that the record lacked evidence to support the claim that the Beneficiary was overseeing "senior level managers" at the time of the requested extension. Finally, we acknowledged that the Petitioner likely had some assistance from an outside accountant and staff responsible for its import and distribution activities as of May 2014, but found that the evidence did not show that the Petitioner had sufficient staff to support the Beneficiary in the travel and consulting lines of business at the time it sought to extend his status.

The newly submitted evidence does not overcome the grounds for denial of the previous motion and establish eligibility for the benefit. Therefore, the Petitioner has not shown proper cause to reopen the proceeding.

B. Motion to Reopen

As in our prior decisions, we stress again that in order to establish merit for reopening our latest decision, the Petitioner must: (1) provide new facts relevant to the *most recent decision,* and (2) support those facts with 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. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

In the present matter, the supporting legal brief is primarily comprised of previously raised arguments that we addressed in one of our prior decisions. While the Petitioner disagrees with our prior decision and contends that it previously submitted evidence that would have changed the result in this case, we point to the detailed analysis contained in each of our previously issued decisions, where we noted specific inconsistencies and deficiencies in the record that served as grounds for dismissing the Petitioner's appeal and denying its three subsequent motions. The Petitioner cannot continue filing motions in an effort to overcome deficiencies it had the opportunity to overcome on appeal.

On motion, the Petitioner submits documents in an attempt to support the assertion that the Beneficiary was relieved from having to primarily perform non-managerial duties through an existing support staff that was in place in May 2014. Such documents include a tour itinerary that was emailed in February 2014. While the Petitioner claims that prepared the itinerary under the Beneficiary's direction, the email containing the itinerary originated from the Beneficiary and therefore does not support the Petitioner's claim. Despite mentioning as a contact who is able to provide information about the stated itinerary, the record does not establish that the Beneficiary was not directly involved in the underlying non-managerial tasks of creating the itinerary. The level of involvement, if any, is unclear and the follow-up June 2014 email from does not impart any new information, since we had already acknowledged in our prior decision that the record contained evidence of involvement in the Petitioner's travel business dating back to June 2014. Moreover, the Petitioner did not provide independent, objective evidence resolving the multiple inconsistencies we previously noted with regard to date of hire, wages, job title, and job duties or with regard to position title and assigned job duties. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Lastly, while the Petitioner submits an affidavit from the Beneficiary, which in itself is "new" because it was not submitted previously, the content of the affidavit does not offer "new facts" and merely restates information that had been previously submitted either in support of the previously filed motions or in support of the appeal. Therefore, the affidavit, along with other supporting evidence that is part of the current motion, does not show proper cause to reopen the proceeding.

C. Motion to Reconsider

In denying the motion to reconsider, we addressed the Petitioner's reference to *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), finding that it did not establish that the facts in this matter are similar to those in the cited case. The Petitioner's continued reliance on the same decision in support of the current motion will therefore not be addressed further. Likewise, the Petitioner's reference to our unpublished decisions also does not warrant reconsideration of our prior decision. As previously stated, while we are bound by published decisions in the administration of the Act, we are not similarly bound by decisions that are unpublished. *See* 8 C.F.R. § 103.3(c).

Lastly, in dismissing the Petitioner's appeal, we agreed with the Director that by the end of its first year of operation the Petitioner had not grown to a stage in its development where it could support the Beneficiary in a managerial position by relieving him from having to primarily engage in the performance of non-managerial tasks. In three subsequent decisions, we affirmed our original finding and provided substantive grounds that prevented the reopening and reconsideration of our decision on appeal. Because this decision is not a *de novo* re-adjudication of the appeal or the underlying petition, we will not repeat our prior analysis here.

As discussed above, evidence submitted with this motion does not establish that the Petitioner was able to employ the Beneficiary in a managerial capacity at the end of its first year of operation. Therefore, this motion to reconsider establishes no error in our prior findings.

III. CONCLUSION

The Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of U-E-, LLC*, ID# 593312 (AAO Aug. 31, 2017)