U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 4RR-E-I- CORP

DATE: DEC. 7, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, described as an exporter of construction equipment, seeks to continue the Beneficiary's temporary employment as its general manager 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, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in a managerial or executive capacity. We dismissed the subsequent appeal and affirmed the Director's decision. The matter is now before us on a motion to reopen.

On motion, the Petitioner makes references to managerial and executive capacity as it cites to section 101(a)(44)(b) of the Act, which defines the term "executive capacity," and states that the Beneficiary assumes "a key managerial" position in which she will "direct management" and "establish policies" of the organization. The Petitioner also offers additional documents in support of the motion.

Upon review, we will deny the motion.

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). 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, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not

constitute "new facts."[1] We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status, evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

In dismissing the Petitioner's appeal, we determined that the Petitioner provided a deficient job description that used broad and ambiguous terminology to account for nearly half of the Beneficiary's time. We also noted that several of the Beneficiary's job duties were indicative of non-qualifying functions and we questioned who would perform the Petitioner's administrative tasks given that none of the positions of its administrative department had been filled when the petition was filed. We further found that the record lacked sufficient evidence to establish that the Beneficiary would oversee a staff of supervisory, professional, or managerial subordinates and that the Petitioner did not specifically identify an essential function to support the Petitioner's alternative claim that the Beneficiary would assume the role of a function manager. In addition, we determined that despite claiming that it exports construction equipment, the Petitioner did not provide evidence to show that it engages in these business activities. In making this determination we pointed to the Petitioner's acquisition of real estate assets and the lack of evidence to show that it had employees who would perform duties related to real estate activities.

On motion, the Petitioner provides a job duty breakdown that is nearly identical to the ones provided earlier in support of the petition and in response to the Director's request for evidence. The only distinction between the current job duty breakdown and those previously submitted is that the new job description provides an hourly time allocation, while the two prior job descriptions conveyed the time allocations using a percentage breakdown.

The Petitioner continues to make vague claims on motion regarding the proposed position, stating that the Beneficiary would "bring together the creative team to work on each account, supervise[] their work, set[] standards for the work . . ., and coordinate the various teams to assure that each account is serviced adequately . . . ." The Petitioner does not identify the members of the "creative team" or establish that it employed such a team at the time of filing. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec.

[1] We note that the Petitioner has resubmitted a number of documents that it previously submitted either prior to the denial or in support of the appeal. While we have reviewed and considered all of the evidence submitted in support of the instant motion, only those documents that were not previously submitted will be specifically addressed in this decision.

369, 376 (AAO 2010). Further, despite our pointing to ambiguous information concerning the nature of the Petitioner's business activities, the Petitioner does not provide clarifying information that would allow us to understand what accounts the "creative team" would service within the scope of its business.

The Petitioner also claims that the Beneficiary will spend the "majority of her time coordinating the work of this office and the established clients, reviewing its quality and conformity to [the Petitioner] and administering the department staff." However, the Petitioner does not provide specific job duties that the Beneficiary would perform in order to "coordinat[e] the work of this office" or "administer[] the department staff"; nor does the Petitioner provide basic information about its business activity to help identify its target client base. While the Petitioner provides a market research study for "2016-17" in which it identified itself as "a Florida-based company engaged to [*sic*] the management and rental of fully furnished apartments and houses," it also provided its 2016 tax return, complete with Schedule K, which identifies the Petitioner as a business engaged in the wholesale of lumber and "other construction materia[l]." The Petitioner must resolve this incongruity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner neither addressed nor provided evidence on motion to resolve the above-described inconsistency. This lack of information precludes a meaningful understanding of the products or services the Petitioner intends to provide and the recipients of those products or services. Further, as indicated in our prior decision, the lack of evidence establishing the nature of the Petitioner's business activity hinders our ability to conduct an effective assessment of its reasonable needs and whether it would have the ability to meet those needs while employing the Beneficiary in a primarily managerial or executive capacity.

In addition, we find that the Petitioner's claim that "[g]ood managerial skills are needed for the important coordination and scheduling functions," requires clarification. This statement's vague reference to "the important coordination and scheduling functions" leads us to believe that the Beneficiary's role within the organization is somehow related to these functions. However, the Petitioner does not expressly state whether the Beneficiary would be tasked with managing these functions, nor does it explain how coordination and scheduling relate specifically to the Petitioner's revenue generating activities such that would lead to the conclusion that coordination and scheduling are indeed essential functions of the organization. Without this critical information we cannot conclude that the Beneficiary would assume the role of a "function manager," which is a term that applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act.

Lastly, while we acknowledge the Petitioner's submission of an updated organizational chart in support of this motion, we note that the only new information the new chart provides is the addition of a "maintenance" position that would be subordinate to the operations manager. However, as with the administrative manager, administrative assistant, accounting, and purchase assistant positions, the

newly added "maintenance" position is also vacant and thus, its addition does not contribute to a clearer understanding of the Beneficiary's job duties or her role in the petitioning organization.

We find that the Petitioner's submissions in support of the motion do not address all of the deficiencies discussed in our prior decision and thus they do not overcome our prior finding that the Petitioner did not establish that at the time of filing it could support the Beneficiary in a managerial or executive position.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or established eligibility for the requested benefit.

ORDER: The motion to reopen is denied.

Cite as *Matter of 4RR-E-I- Corp*, ID# 744668 (AAO Dec. 7, 2017)