U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C- INC.

DATE: DEC. 7, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a clothing wholesaler, seeks to continue the Beneficiary's temporary employment 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: (1) it has a qualifying relationship with the Beneficiary's employer abroad; (2) the Beneficiary would be employed in a managerial or executive capacity under the extended petition; and (3) the Beneficiary was employed abroad in a managerial or executive capacity. We dismissed the Petitioner's appeal of that decision and denied its subsequent combined motion to reopen and reconsider.

The matter is now before us on a second combined motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and requests approval of the petition.

Upon review, we will deny the combined motion.

I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We will discuss the requirements of each type of motion below. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen the proceeding to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our decision 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reconsider the denial of the petition, or to reconsider the dismissal of the appeal. It is a motion to reconsider our prior decision on motion. We will not consider new objections to the earlier denial or dismissal decisions, because the filing deadline has passed for motions to reconsider those decisions, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

In our prior decision, we denied the Petitioner's motion to reconsider, stating:

> [T]he Petitioner does not provide reasons for reconsideration or cite to pertinent precedent decisions to establish that our decision was based on an incorrect application of law or policy, as required.

The Petitioner does not show that the above characterization was incorrect and does not identify any misapplication of law or policy in our prior motion decision, issued in May 2018. Therefore, we find that we correctly denied the prior motion, as it did not cite to law or policy or show proper cause for reconsideration. With the current motion, the Petitioner has not met the requirements of a motion to reconsider.

III. MOTION TO REOPEN

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In support of its motion to reopen, the Petitioner has submitted some evidence that is new to the record. For the reasons explained below, however, we find that this evidence does not warrant reopening of the proceeding or approval of the petition.

As noted, the Director denied the petition and we dismissed the Petitioner's appeal based on three separate grounds. Although the Petitioner has submitted new evidence, this evidence is not relevant to the issue of whether the Beneficiary was employed abroad in a managerial or executive capacity, or the issue of whether the Beneficiary would be employed under the extended petition in a managerial or executive capacity.[1] Accordingly, the Petitioner has not offered new facts or otherwise shown proper cause to reopen either one of these issues.

[1] The Petitioner states that it hired a new employee for an unidentified position and provides a copy of a check issued to her in May 2018, as well as a letter from its accountant stating that the company has two employees on its payroll as of

The new facts and evidence submitted on motion are intended to address the remaining ground for denial of the petition and dismissal of the appeal, specifically, the Petitioner's qualifying relationship with the Beneficiary's foreign employer.

In dismissing the Petitioner's appeal, we observed that the information reported in the Petitioner's federal tax return did not support its claim that the company is wholly-owned by the Beneficiary's foreign employer. Further, we emphasized that the Petitioner did not submit sufficient supporting documentation to substantiate its ownership, such as its articles of incorporation, its stock ledger, and copies of all stock certificates issued to date.

In support of its prior motion to reopen, the Petitioner submitted a copy of the Beneficiary's 2015 individual income tax return, which identified him as the Petitioner's sole owner and therefore was not consistent with its claim that it is wholly owned by a foreign entity. The Petitioner also submitted an audited financial statement for the foreign employer, but this document did not include information regarding the Petitioner's ownership. Finally, we acknowledged the Petitioner's claim that it was submitting an amended tax return "to document and establish correct ownership of the company," along with a "memorandum of understanding from [the foreign employer] showing its direct relationship between [it], and its US affiliate, [the Petitioner]." However, we determined that neither of these documents was included with the Petitioner's motion. Accordingly, we found that the Petitioner had not submitted sufficient evidence to warrant reopening the issue.

In support of the instant motion to reopen, the Petitioner submits: (1) the foreign entity's certificate of incorporation, memorandum and articles of association, and certificate of registration, all dated in 2003, which show that the Beneficiary and one other individual each owned 50 percent of the company; (2) the Petitioner's lease executed in January 2018 and various documents showing its ongoing business activities; (3) copy of the Petitioner's stock certificate no. 2 which shows that it issued 200 shares to the foreign entity in February 2008; and (4) a May 2018 letter from [redacted] a tax consultant with [redacted] who states that the Beneficiary is the owner of 100% of the Petitioner's stock and is its owner and president.

The Petitioner asserts that it is submitting a "memorandum of understanding from [the foreign entity] showing its direct relationship between the Indian parent company and its US affiliate, [the Petitioner]," but this evidence is not included with the motion. The Petitioner also asserts that it is providing evidence of shipments it received from the foreign entity that were used to finance the U.S. company, but these documents are also not attached. The Petitioner maintains that the Beneficiary owns 100% of the foreign entity and asserts that the Petitioner's stock certificates establish that the foreign entity wholly owns the petitioner.

May 30, 2018. This petition was filed in June 2015 and the Petitioner must show that it had sufficient staff to support the Beneficiary in a managerial or executive capacity at that time. Therefore, evidence relating to a recent hire, while new, cannot establish the Beneficiary's eligibility at the time of filing. 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).

While some of the evidence submitted on motion is new, it does not overcome our previous finding that there is insufficient supporting documentation to establish that the Petitioner has a qualifying relationship with the foreign entity. The newly submitted evidence does not resolve the deficiencies noted in our previous decisions, namely the absence of the Petitioner's articles of incorporation, copies of all stock certificates it has issued, and its stock ledger. While the stock certificate no. 2 issued in 2008 indicates that the foreign entity owned all 200 shares of the Petitioner's stock at that time, there is evidence in the record which post-dates the stock certificate and which suggests that the ownership has changed. As noted, the latest tax return in the record does not reflect the foreign entity's ownership of the Petitioner, while the Beneficiary's 2015 individual income tax return appears to reflect that he is the sole owner.

Further, the letter from [redacted] in support of this motion identifies the Beneficiary as the Petitioner's sole owner, despite the Petitioner's claim to the contrary. Similarly, the Petitioner claims that the Beneficiary wholly owns the foreign entity, but the only supporting evidence submitted to substantiate the foreign entity's ownership reflects that he owns half of the company.

In sum, there are too many unresolved consistencies to establish the actual current ownership of either the Petitioner or the foreign entity. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not provided new evidence to warrant reopening of the matter.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-C- Inc.*, ID# 1772465 (AAO Dec. 7, 2018)