U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6902112

Date: DEC. 11, 2019

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (L-1A)

The Petitioner, an e-commerce business that frames artwork and documents, seeks to temporarily employ the Beneficiary in the United States as its chief financial officer (CFO) 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 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 or executive capacity. The Petitioner later appealed this decision and we dismissed the appeal. The Petitioner later filed a subsequent motion to reconsider that we denied. The matter is now before us again on a motion to reconsider.

On motion, the Petitioner submits additional assertions and evidence it claimed demonstrates that the Beneficiary would act in an executive capacity.

Upon review, we will dismiss the motion to reconsider.

I. MOTION TO RECONSIDER REQUIREMENTS

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). We do not consider new facts or evidence in a motion to reconsider.

II. DISCUSSION

The Petitioner does not identify any error of law or policy in our previous May 2019 denial of its previous motion to reconsider. Instead, the Petitioner submits general information on chief financial officers collected from various websites and provides payroll documentation from 2017 and 2018 related to it and a previously unidentified U.S. company [redacted]

In our initial dismissal of the Petitioner's appeal we pointed to the Beneficiary's initial job description and indicated that it included undefined terms and duties apparently unrelated to its business, including mention of "regulatory action," "legislative sessions," and "policy-making committees." We stated that the Petitioner subsequently submitted additional conflicting duty descriptions and concluded that they lacked both consistency and detail. Further, we emphasized that the record was inconsistent as to the Petitioner's employees. For example, we noted that the Beneficiary's duties stated that he would evaluate the "performance of executives," but pointed to the fact that there were no executives subordinate to him. Likewise, we discussed the fact that the Beneficiary's duties referred to an audit committee, controller, tax manager, human resources manager, and investor relations officer, despite none of these positions appearing in the Petitioner's organizational chart. In addition, we indicated that the Petitioner responded to a request for evidence (RFE) with payroll documentation and employment contracts after the petition's filing date in September 2017. Therefore, we stated that the evidence did not show how many employees, if any, the Petitioner employed when it filed the petition.

In a later motion to reconsider, the Petitioner did not explain how any of our conclusions were in error, given the record at the time of our decision. We stated that the Petitioner did not address the several discrepancies noted in our previous decision, but introduced additional inconsistencies. For instance, the Petitioner did not explain why it previously submitted a job description indicating that the Beneficiary would supervise a "Controller, Tax Manager, Human Resources Manager, [and] Investor Relations Officer" when it had no such asserted employees. Further, we pointed to the fact that the Petitioner stated it had contracted with a third-party firm in March 2017, while its certificate of incorporation was dated [redacted] 2017. We also noted that the Petitioner did not sufficiently explain the absence of payroll documents prior to November 2017. We also importantly concluded that the Petitioner had submitted new evidence with a motion to reconsider, not pursuant to the proper motion to reopen; as such, this evidence could not establish that our prior decision was incorrect based on the record at the time of that decision, because it was not yet in the record for us to consider. *See* 8 C.F.R. § 103.5(a)(2).

Regardless, we discussed several other discrepancies introduced through the additional evidence provided with the motion to reconsider. For instance, the Petitioner provided IRS Forms W-2, Wage and Tax Statements reflecting, only six employee names listed in the organizational chart submitted with the petition. We indicated that the Petitioner did not document any salaries paid prior to November 2017 and that the new evidence suggested that it did not have any employees or operations when it filed the petition in September 2017. For example, we pointed to a September 2017 bank statement reflecting that it had no bank balance before August 16, 2017. We also discussed the fact that the Petitioner's certificate of incorporation was dated [redacted] 2017, only [redacted] weeks before it filed the petition, and stated that this discrepancy raised serious question at to its operations as of the date the petition was filed. We also noted a submitted Internal Revenue Service (IRS) letter dated in September 2011, predating the Petitioner's incorporation by approximately six years. Further, we noted that this IRS letter was addressed to a gallery it claimed to have purchased in October 2017.

As a preliminary matter, similar to the previous motion to reconsider, the Petitioner does not specifically articulate why our decision of May 2019 was incorrect based on the record at the time of that decision. Again, the Petitioner provides new evidence with the motion to reconsider, including payroll documentation dating from March through September 2017. As we discussed in our previous decision, a motion to reconsider is not a proper forum to introduce new evidence as it cannot establish

that our prior decision was incorrect based on the record at the time of that decision, as this evidence was not yet in the record for us to consider at that time. *See* 8 C.F.R. § 103.5(a)(2). This alone, represents sufficient grounds for dismissing this motion.

Regardless, the new assertions and evidence submitted on motion do little to address the numerous insufficiencies and discrepancies discussed in our previous decisions. For instance, in our previous decisions, we discussed a number of discrepancies in the Beneficiary's duty descriptions, such as duties not relating the Petitioner's claimed business, conflicting duty descriptions, and his duties discussing the supervision of employees, such as "executives" as one example, not listed in its organizational chart.

On motion, the Petitioner does not address these material discrepancies but submits generic information on CFOs printed from the internet. This information presents broad and generic statements as to CFOs acting in any company or industry, such as indicating that they analyze financial statements, have knowledge of general accounting principles, and that they "work 50-60 hours of work." In total, this generic information on CFOs totaled approximately 13 pages, leading the Petitioner to declare that "the above bookish and literature information also provides that the position of the beneficiary, CFO, is an executive capacity job not a managerial one." First, this statement from the Petitioner appears to indicate that we incorrectly analyzed whether the Beneficiary qualified as a manager in this matter; however this is not the case, as we discussed in detail whether he qualified as an executive in both our previous decisions. In addition, it is not clear how general information from the internet about CFOs is probative in demonstrating the Beneficiary's executive capacity in this particular matter and this discussion and evidence does nothing to address the numerous discrepancies we noted in our previous decisions, such as the material inconsistencies in his duty descriptions. The Petitioner must resolve inconsistencies 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 also does not address the several discrepancies we discussed with respect to its operations and date of incorporation. For instance, we noted that its bank statements in [redacted] 2017 did not reflect any activity prior to this month and that it was incorporated only six months prior to the date the petition was filed. The Petitioner only leaves more uncertainty on motion as it submits payroll documentation dating from March 2017 through September 2017 related to a previously unmentioned company called [redacted] who it states has been "running since 2014 [and] whose CEO is [the president of the Petitioner] and he is the petitioner in this case." This payroll documentation related to this previously unmentioned legal entity included six employees listed in the Petitioner's organizational chart provided along with the appeal. The Petitioner indicated that its accounting contractor had "refused or delayed updating the name on the payrolls from [redacted] to [the Petitioner]…despite repeated attempts," further stating that it "was negligent."

This evidence and these assertions on motion introduce substantial additional uncertainty. For example, the Petitioner did not previously mention [redacted] and now submits documents related to this entity on a second motion to reconsider. The Petitioner does not explain this entity, its operations, or relationship with it or the foreign employer, beyond indicating that the companies share the same president. The vague assertions of the Petitioner appear to suggest that it operated as [redacted] prior to its apparent incorporation in [redacted] 2017. However, if this is indeed the case, it is highly questionable that the Petitioner did not mention this entity until a second motion to reconsider

filed over two years after the date of the initial petition, despite several opportunities to address the lack of evidence as to its operations near to the date the petition was filed. Indeed, even if we assume that the Petitioner operated as a different legal entity prior to the date the petition was filed, the payroll documentation for this entity only reflects six of the asserted 13 employees listed in the organizational chart provided along with the petition. Further, the Petitioner provides two sets of 2017 [redacted]. IRS Forms W-2 reflecting different employees and differing amounts paid to each. For instance, one set of 2017 Forms W-2 reflects that the Petitioner's claimed frame production manager earned $31,019.85, while the other set indicates that this employee made only $6,542.24. In sum, much like the previous motion, the Petitioner has not resolved specifically noted inconsistencies in our previous decisions, but only presents new discrepancies that place further doubt as to the validity of the petition.

Likewise, the Petitioner does not address the September 2011 letter from the Internal Revenue Service discussed in our previous decision, which stated that it must file an IRS Form 1120, U.S. Corporation Income Tax Return by March 15, 2018 and which listed the address of a gallery it claimed to acquire in 2017. On motion, the Petitioner only reiterates that it acquired the gallery in 2017 stating that "all the operations and production activities of [the Petitioner] are running over here" and that "after the acquisition, the [gallery] is not a separate business entity but is part of the [the Petitioner]." It is not clear how these assertions overcome the material discrepancies inherent in an IRS letter dated in 2011, approximately six years prior to the date the Petitioner was incorporated, which we discussed in detail in our previous decision. Once again, the Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for our previous denial of its motion to reconsider. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reconsider is dismissed.