U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-G-A-V-S-, LLC

DATE: DEC. 14, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a marketing and promotional materials business, seeks to continue the Beneficiary's temporary employment as its chief executive officer and manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity. We later dismissed the Petitioner's appeal.

The matter is now before us on a combined motion to reopen and motion to reconsider. In support of its motion, the Petitioner states that the Beneficiary performs primarily executive and managerial duties and that it requires an additional year to "implement our foundation."

Upon review, we will deny the combined 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). A motion to reconsider must establish that our decision was based on an incorrect

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 7, 2016, until January 6, 2017. 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.

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 (DHS) policy. We may grant a motion to reopen or reconsider that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

For the reasons discussed below, we will deny the motion to reopen and the motion to reconsider. While the current motion includes newly submitted assertions and evidence, the Petitioner has not shown proper cause for reopening or reconsideration.

A. Motion to Reopen

In our previous decision, we determined that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity, as defined at section 101(a)(44) of the Act, under the extended petition.

We pointed to several evidentiary deficiencies on the record. We found that the Beneficiary's duties were overly vague and that they did not reflect his day-to-day tasks, noting that they did not include any references to the Petitioner's specific business. Further, we indicated that the record included evidence that the Beneficiary was still performing non-qualifying operational tasks and found that the Petitioner did not indicate what portion of time he devoted to these tasks as compared to managerial or executive tasks. Finally, we found that the Petitioner had provided insufficient evidence to establish that it employed the workers and contractors listed in its organizational chart. After reviewing the totality of the evidence, we concluded that the Petitioner did not demonstrate that it employed sufficient employees to perform the operational duties of the business as necessary to relieve the Beneficiary from primarily performing these tasks.

On motion, the Petitioner does not provide new facts to overcome our previous conclusions. The Petitioner only points to its business difficulties in a "fearful market" and states that "due to a set back with our L1 renew we lost some . . . grip on our growth." The Petitioner asserts that it requires another year "to implement our foundation and certainly our company will provide many openings for this new aggressive strategy." Further, the Petitioner states that "as a small company, [the Beneficiary] has a hundred of functions and duties," and reiterates the statutory definitions of managerial and executive capacity. The Petitioner contends that it believes the Beneficiary's duties have been primarily consistent with those definitions.

These assertions are not sufficient to overcome our previous reasons for dismissing the appeal. As discussed in our previous decision, the Petitioner has provided a vague duty description which does not provide a detailed picture of the Beneficiary's actual day-to-day tasks and further it does not indicate how much time he devotes to operational tasks as compared to qualifying managerial or

executive tasks. On motion, the Petitioner provides no additional clarifications to address these insufficiencies. In fact, the Petitioner's claim that it has experienced setbacks in its development and the statement that the Beneficiary has "a hundred" functions and duties only provides more question as to the Beneficiary's role and whether he is primarily performing managerial or executive tasks. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Likewise, the Petitioner has not addressed the lack of evidence to corroborate its asserted staffing levels and organizational structure. For instance, we noted that the Petitioner did not substantiate its organizational chart, particularly its assertion that it used independent contractors to perform the operational duties of the business. The Petitioner offers no new facts or evidence to address these insufficiencies. The Petitioner indicates that one more year will allow it to gain a better "foundation" and implement a "new aggressive marketing strategy." The Petitioner appears to assert that it requires another year to develop to support the Beneficiary in a qualifying managerial or executive capacity.

Although we acknowledge the Petitioner's difficulties in development, the regulations do not allow for a second year as a new office. The submitted evidence is not persuasive in demonstrating that the Beneficiary has been or will be employed in a managerial or executive capacity. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations allowing for an extension of this one-year period. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension.

We addressed our reasons for dismissing the appeal at length in the previous decision. The Petitioner has not met the requirements of a motion to reopen by submitting new facts or evidence to overcome the issues raised in our decision. For this reason, the motion to reopen is denied.

B. Motion to Reconsider

As noted, 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 USCIS or DHS policy.

On motion, the Petitioner does not assert that any of the findings set forth in our previous decision were incorrect based on pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or DHS policy.

Therefore, the Petitioner has not submitted any assertions that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be denied.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen the proceeding or proper cause for reconsideration.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-G-A-V-S-, LLC*, ID# 803770 (AAO Dec. 14, 2017)