U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13696320

Date: DEC. 22, 2020

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner seeks to operate a convenience store and to temporarily employ the Beneficiary as a "general operations director" of its new office[1] 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 Director of the California Service Center denied the petition, concluding that the record did not establish that (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the new office would be able to support a managerial or executive position within one year of approval of the petition. The Petitioner filed an appeal which we dismissed. The matter is now before us on a combined motion to reopen and reconsider.[2]

On motion, the Petitioner contends our previous decision was in error. Upon review, we will dismiss the motion to reopen and the motion to reconsider.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, 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 we based our decision on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

[2] The Petitioner checked the box on the Form I-290B, Notice of Appeal or Motion, indicating that it is filing only a motion to reconsider. The Petitioner's brief is labeled a motion to reopen and reconsider and the Petitioner submits one new document in support of the motion. Despite the ambiguity, we will consider both motions.

proceeding at the time of the decision. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A. Motion to Reopen

On motion, the Petitioner provides a copy of a sample employee handbook as evidence that the Beneficiary is performing duties in an executive capacity. As discussed in our previous decision, we recognize that the Beneficiary would have authority to establish plans, policies, and objectives for the company and make major decisions regarding its finances and overall direction; however, the Petitioner does not describe how these types of responsibilities would primarily occupy the Beneficiary's time within a year. Moreover, reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. 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). Here, the Petitioner has not provided the necessary detail to demonstrate the Beneficiary's actual duties and responsibilities during the Petitioner's first year of operations and further how those duties and responsibilities will lead to primarily executive duties within one year of this petition's approval.

The Petitioner does not state new facts supported by affidavits or documentary evidence sufficient to meet the requirements of a motion to reopen. As the record on motion does not include new, relevant evidence regarding these issues, the Petitioner has not shown proper cause to reopen this matter.

B. Motion to Reconsider

With respect to the motion to reconsider, the Petitioner asserts that the evidence it submitted is sufficient to satisfy the preponderance of evidence standard and that we did not apply this standard when adjudicating this matter. As stated in our prior decision we follow the preponderance of the evidence standard as specified in Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). This standard requires that a petitioner establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Id. at 375-76. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id. at 376; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In this matter, the Petitioner does not articulate probative reasons which establish that our previous decision was based on an incorrect application of the preponderance of evidence standard in this matter.

The Petitioner also asserts that we did not properly consider the Beneficiary's executive duties performed on behalf of the U.S. entity. The Petitioner reiterates that the Beneficiary signed a partnership agreement for the U.S. entity with the president of the foreign entity,[3] incorporated the

[3] Although signed by the Beneficiary and the president of the foreign entity, the partnership agreement creates ambiguity in the record regarding the Petitioner's organization and ownership. The Petitioner was established in the State of Texas

U.S. entity, established a bank account for the U.S. entity, found the location for the U.S. entity, and negotiated the lease agreement for the new entity.[4] We reviewed this previously submitted information and concluded that Petitioner did not provide the requisite detail regarding the Beneficiary's actual tasks that he would perform during the various stages of the Petitioner's development. Further, that the Petitioner did not explain how the Beneficiary's rudimentary tasks in the start-up phase of the business would develop to tasks that would be primarily executive in nature once the Petitioner passed the "new office" stage of development. The record on motion does not include persuasive argument contrary to our conclusion.

For example, the Petitioner points out on motion that its business plan includes the statement "[t]he aim of this plan is to be a guide for the renovation of this business." The Petitioner contends this statement should be construed as evidence of the Petitioner's intention to establish franchises within the second year of its operations. However, other than the ambiguous statement in the business plan and a vague reference to investing in the U.S. market, the Petitioner did not provide evidence of its intent to expand its business operations beyond the operation of one convenience store location and that such expansion would occur within the one-year time frame to establish a "new office." 8 C.F.R. § 214.2(l)(3)(v)(C). Rather, the business plan and the documentary evidence in the record is limited to the Petitioner's one proposed convenience store location.[5] The Petitioner's additional claim on motion that the Beneficiary will be responsible for seeking out additional convenience stores for purchase and thus its future plans include owning and operating more stores which will involve additional managers and staff is not supported in the record. The Petitioner, on whom the burden of proof rests,[6] does not offer evidence or credible argument establishing that the prior 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 proceeding at the time of the decision.

For the reasons listed above, the Petitioner has not shown proper cause to reconsider the previous decision.

III. CONCLUSION

The Petitioner has not shown proper cause to reopen this matter and has not shown proper cause to reconsider the previous decision. The Petitioner has not established that within one year of the petition's approval, the Petitioner would have the organizational complexity to support a primarily executive position. As we concluded in our previous decision, this issue is dispositive in this matter,

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as a corporation, not a partnership. The effect and purpose of the partnership agreement on the Petitioner's ownership and qualifying relationship with the foreign entity must be clarified in any future proceedings. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988). Additionally, the Petitioner's right to transact business in the State of Texas appears to have involuntarily ended, according to the Texas Comptroller of Public Accounts, https://mycpa.cpa.state.tx.us/coa/coaSearchBtn (last visited Dec. 2, 2020). The Petitioner must also provide evidence of its continuing ability to conduct business in the State of Texas and its intent to do business in the future in any further proceedings.

[4] These duties involve the minimum initial tasks to begin a new business.

[5] For example, we pointed out that although the business plan included a three-year projection of its staffing and operations, it did not indicate that the staffing or operations would change from the initially stated projections for the one convenience store to include staffing for additional stores.

[6] As in all visa petition proceedings, the burden of proof rests with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

thus, we need not reach the other issue identified by the Director in this matter and therefore reserve it.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.