U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12757001

Date: FEB. 3, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, operating as a restaurant, 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. [1]

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Beneficiary will be employed in the United States in a managerial capacity. We dismissed the Petitioner's appeal from the decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

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 Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period July 7, 2018, until July 6, 2019. 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.

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 does not directly address the requirements of a motion to reopen or identify any new facts that it seeks to introduce into the record. The Petitioner submits a motion brief and a copy of the summary data for Executive or Head Chefs from the Department of Labor's (DOL) *Occupational Outlook Handbook*. In the motion brief, the Petitioner further explains how the duties submitted with the petition indicate that the Beneficiary will be working in a managerial capacity. Therefore, the brief and exhibits submitted on motion do not introduce new facts into the proceeding.

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

The Petitioner is a restaurant that serves Beijing and Shandong cuisines, and has nine full-time employees. The full-time positions include a general manager, assistant general manager, hall manager, waitress, executive chef, chef, kitchen helper and dishwasher.

To satisfy the requirements of a motion to reconsider, the Petitioner must show that our appellate decision contained errors of fact, law, or policy that affected the outcome of that decision. In dismissing the Petitioner's appeal, we agreed with the Director's assessment that the job description provided for the Beneficiary's position in the United States lacked sufficient details. On motion, the Petitioner repeats these job descriptions, but repeating information already in the record does not establish that we erred in our appellate decision. The Petitioner does not claim that we materially misquoted or omitted information from those job descriptions in our prior decision.

The Petitioner's supporting statement included a job duty breakdown, which allocated time to five broadly described categories and listed various goals, directives, and activities comprising each category. On motion, the Petitioner reiterates that the Beneficiary "manages and directs a subordinate staff of supervisor personnel, namely the General Manager Assistant, Hall Manager and Executive Chef." The Petitioner further states that the Beneficiary is the "highest-ranking employee in the organization hierarchy and is solely responsible for ensuring the Petitioner Restaurant as efficiently as possible." In addition, the motion contends that the Beneficiary is not directly involved in the day-to-day routine tasks associated with the general marketing duties, serving customers, preparing and cooking dishes or other non-qualifying tasks related to Petitioner's primary business activities," and instead the assistant general manager, hall manger, and executive chef handle these operational tasks while the Beneficiary oversees the direction and guidance of these operational duties.

However, the fact that the Beneficiary will manage a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section

101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. Section 101(A)(44)(A) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, these factors alone are insufficient to establish that his actual duties would be primarily managerial in nature.

Although the Petitioner repeats that the Beneficiary's three managers handle several of the non-qualifying duties, the Petitioner does not provide sufficient evidence of the managerial work to be performed by the Beneficiary. As noted in our decision, the Petitioner did not clarify which activities constitute supervising safety management or setting prices on the menu items, nor did it explain what constitutes "enterprise management." Further, although the Petitioner stated that the Beneficiary would improve dishes per customer preferences and improve the restaurant's "visibility" within the U.S. market, it did not establish that these activities are managerial, as opposed to operational, in nature. The Petitioner did not define what encompasses the "organizational management system," nor did it clarify the types of methods the Beneficiary would formulate with respect to "front hall service" and food safety storage or explain how these broadly stated duties translate into activities the Beneficiary would perform regularly in the course of running a restaurant. Lastly, the Petitioner stated that the Beneficiary would devote 20% of his time to "day-to-day management," which would include signing "important contracts" and participating in "important conferences in the industry and attend[ing] trade shows," and the remaining 15% of his time to approving "major payments" and determining the Petitioner's "financial flows." However, the Petitioner did not specify the types of contracts that are prioritized as "important" or establish that the Beneficiary would encounter such contracts in the normal course of daily or weekly business activity, nor did it show that attending trade shows is a managerial task. On motion, the Petitioner does not provide evidence to overcome the AAO's concerns outlined in the previous decision.

In addition to providing an organizational chart, the business plan also described the steps the Petitioner planned to take to expand its operation, such as using specific marketing initiatives to "enhance brand influence" and "create a good reputation" among the Petitioner's targeted customer base, ensuring the Petitioner's business presence at various local events to promote its food products, and incorporating event catering services into its business model. On motion, the Petitioner stated that as a result of the expansion, it will grow and hire more employees. However, it is not clear how the current staff of three managers will perform the operational tasks involved in a business expansion such as marketing, while also handling the responsibilities of running a restaurant as required in the positions of assistant manager, hall manager, and executive chef.

Thus, although the Petitioner states that the Beneficiary oversees a supervisory staff comprised of an assistant general manager, a hall manager, and an executive chef, the lack of a detailed job description precludes us from gaining a meaningful understanding as to how the Beneficiary would manage these employees in the course of the Petitioner's daily operation and what managerial job duties he would carry out. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise, meeting the statutory definitions would simply be a matter of reiterating the regulations. *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).

The Petitioner has not shown that our appellate decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider and must be dismissed.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsidering the previous decision or otherwise established eligibility for the immigrant benefit sought. In visa petition proceedings, it is a 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 reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.