U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-E-, INC.

DATE: FEB. 12, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an exporter of appliances and other goods, seeks to temporarily employ the Beneficiary as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 the Beneficiary would be employed in a managerial capacity. The Petitioner subsequently filed an appeal, which we dismissed. We further found that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's last foreign employer.

The matter is now before us on a motion to reopen, which includes a brief and additional evidence. Upon review, we will deny the motion to reopen. However, we find that the evidence submitted on motion is sufficient to establish that the Petitioner maintains a qualifying relationship with the Beneficiary's foreign employer, and our adverse finding with respect to that issue is withdrawn.

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 must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] The Petitioner indicated that it was seeking to continue the Beneficiary's temporary employment and requested an extension of L-1A status. However, the prior approved L-1A petition was valid from October 29, 2012, until October 28, 2013. The Petitioner previously filed a petition to extend his status (with receipt number [redacted] which was denied. We dismissed the appeal that stemmed from that denial, and denied two subsequent motions. As noted in our previous decision, the Petitioner did not establish that the Beneficiary had an approved petition eligible for extension at the time it filed this petition in December 2016.

II. ANALYSIS

The issue before us is whether the evidence submitted in support of the Petitioner's motion includes new facts that warrant the reopening of the matter and which establish that the Beneficiary would be employed in the United States in a managerial or executive capacity.

In dismissing the appeal, we considered the totality of the evidence and determined that the Petitioner did not provide a sufficiently detailed description of the Beneficiary's position or his expected day-to-day duties. We further determined that the Petitioner did not submit evidence to corroborate its claimed staffing levels or organizational structure at the time of filing, and therefore did not meet its burden to demonstrate that it had sufficient staff in place to relieve the Beneficiary from performing non-qualifying operational and administrative tasks. Specifically, we observed that the Petitioner did not provide evidence of wages paid to employees in 2016, an organizational chart, or material information regarding the Beneficiary's claimed subordinate employees, including their job titles, job duties, and qualifications. We concluded that the totality of the evidence did not support the Petitioner's claim that the Beneficiary would perform primarily managerial or executive duties.

As noted, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Any new facts must establish eligibility at the time the underlying petition was filed.

The Petitioner's motion includes a brief and more than 30 exhibits. These exhibits include: the Petitioner's current organizational chart, which includes employees hired in August 2018; job descriptions for current employees; evidence of wages paid to employees in 2018; copies of monthly bank statements and utility bills dated in 2018; miscellaneous supplier invoices from 2018; miscellaneous sales invoices from 2017 and 2018; photographs of the Petitioner's office and warehouse; a consulting agreement signed in August 2018; and various letters from local business managers who confirm their ongoing business relationship with the petitioning company.[2]

However, this updated evidence cannot establish the Petitioner's and Beneficiary's eligibility at the time the underlying petition was filed in December 2016. 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). Evidence of hiring that occurred nearly two years after the date of filing does not provide proper cause to reopen the proceeding. Here, the record remains devoid of corroborating evidence of the company's staffing levels and structure at the time of filing. The submitted evidence does not address the specific deficiencies discussed in our previous decision.

[2] The remaining evidence relates to the Petitioner's ownership and the ongoing business activities of its foreign parent company. As noted, we find this evidence sufficient to establish that the Petitioner is a subsidiary of the Beneficiary's foreign employer and that the foreign entity continues to do business as a qualifying organization abroad.

The Petitioner has also submitted a revised position description for the Beneficiary and has submitted, for the first time, job descriptions for other staff employed with the company. However, the position description, like that submitted at the time of filing, is vague and non-specific, and all of the submitted descriptions are intended to describe the duties performed by the Beneficiary and his staff as of 2018. The record continues to lack a detailed description of the actual duties the Beneficiary would be performing as of the date of filing, and evidence of the company's staffing structure and organization at that time.

III. CONCLUSION

The newly submitted evidence does not overcome all grounds for denial and establish eligibility for the benefit sought. Therefore, the Petitioner has not shown proper cause to reopen the proceeding.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-E-, Inc.*, ID# 2217799 (AAO Feb. 12, 2019)