U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-G-, INC.

DATE: JAN. 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a consulting company for marketing research firms, seeks to temporarily employ the Beneficiary as its chief executive officer 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 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. The Petitioner appealed the denial which we dismissed finding that the Petitioner had not established that the Beneficiary would be employed in an executive capacity for the Petitioner.[1] We also determined that the Petitioner had not provided evidence that the intended employment would be temporary as required by 8 C.F.R. § 214.2(l)(3)(vii). The matter is before us on a motion to reopen. The Petitioner on motion has demonstrated that the Beneficiary's intended employment would be temporary, so we withdraw our determination on the temporary employment issue. In its motion, the Petitioner submits additional evidence and asserts that it will employ the Beneficiary in an executive capacity. We will deny the motion to reopen.

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[2] is based on legal grounds and must (1) state the reasons for

[1] The Petitioner did not claim that the Beneficiary would be employed in a managerial capacity. We, therefore, restricted our analysis to the Beneficiary's claimed executive capacity.

[2] The Petitioner has not filed a motion to reconsider and does not offer legal argument supported by pertinent precedent decisions to establish that our decision on the issue of the Beneficiary's U.S. executive capacity was based on an incorrect application of law or policy.

reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

On motion, the Petitioner submits copies of several additional agreements negotiated and executed by the Beneficiary prior to and after filing the petition. The Petitioner states that these agreements relate to its evaluation and execution of merger and acquisition opportunities with several marketing research businesses in the United States. The Petitioner also claims that these agreements show that the Petitioner plans to acquire existing U.S. consulting businesses, increase its staffing, and establish strategic partnerships.[3] The Petitioner contends that the Beneficiary has been acting in an executive capacity by entering into these agreements and that another employee would not have the authority to enter into these agreements on its behalf. The Petitioner avers that the Beneficiary is directing a major function of the organization by negotiating and executing these agreements.

We have reviewed the agreements submitted on motion and note that the Beneficiary's execution of these agreements demonstrate that he has exercised his discretionary authority to enter into these agreements as the Petitioner's co-founder. We reiterate, however, that the Petitioner has not provided evidence of existing in-house or outsourced workers who would carry out the non-executive day-to-day activities associated with any of the Petitioner's specific operations. Performing the necessary tasks to develop relationships, increase staffing, and establish strategic partnerships is not directing a function but are the actual activities necessary to establish and run the Petitioner's business. Performing the necessary functions of the company is not directing the function. The Petitioner has not satisfied all four elements of the statutory definition of executive capacity.[4] The record on motion is insufficient to establish that the Beneficiary will perform primarily in an executive capacity.

We also noted in our denial decision that the record included "Leadership Profiles" for several officials of the organization. The Beneficiary's profile states that "[h]e consults for our clients in both practice areas of organic and inorganic business development." We found that this profile of the Beneficiary's role in the organization showed his active involvement in providing client consultation, not providing oversight of subordinate consultants. On motion, the Petitioner takes issue with our interpretation of the Beneficiary's U.S. role. The Petitioner asserts that the Beneficiary's U.S. position, as set out in its descriptions for the proposed position, focuses on

[3] The Petitioner also submits a revised organizational chart reflecting the U.S. structure after acquisition. However, the organizational chart does not establish the company's personnel as of the petition's filing date. Thus, the revised organizational chart is not relevant to this proceeding.

[4] The Act defines the term "executive capacity" as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function thereof; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

building the U.S. business and negotiating and entering into strategic agreements which is demonstrated by the agreements submitted on motion. The Petitioner, however, does not explain or provide evidence of who will perform the Petitioner's day-to-day operational tasks necessary to build the U.S. business or provide client consultation, other than the Beneficiary. Although the Petitioner emphasizes the Beneficiary's discretionary decision-making authority, at the time of filing, the Petitioner did not establish that the Beneficiary directs the management of the organization or directs a major function of the organization.

The record on motion is insufficient to warrant reopening our decision on this issue. The motion to reopen does not present any new facts supported by affidavits or other documentary evidence that establishes the Beneficiary will perform primarily in an executive capacity.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening the matter. The Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-C-G-, Inc.*, ID# 923226 (AAO Jan. 11, 2018)