U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K- LTD.

DATE: JAN. 17, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a sportswear design and manufacturing company, seeks to extend the Beneficiary's temporary employment as its administrator and project manager 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that the Beneficiary would be employed in an executive position under the extended petition. We dismissed the Petitioner's appeal.

The matter is now before us on a motion to reopen. On motion, the Petitioner submits a letter from its managing CEO, who suggests that our decision displays a lack of understanding of the submitted evidence, the nature of the Beneficiary's duties, and the nature of the Petitioner's industry.

Upon review, we will deny the motion.

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen the proceeding to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 103.5(a)(2), "Requirements for motion to reopen," states:

> A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence.

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states:

> Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . was filed.[1]

The new facts addressed in a motion to reopen must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

II. ANALYSIS

For the reasons discussed below, we will deny the motion to reopen.

We denied the petition based on a finding that the evidence did not establish that the Beneficiary would be employed in an executive capacity under the extended petition. We acknowledged the Petitioner's claim that the Beneficiary is responsible for the research and planning of a manufacturing reshoring project that would result in the construction and operation of the company's first U.S.-based manufacturing facility. However, we determined that the evidence showed that this project, as of the date of filing, was still in the planning stage, and that many of the duties attributed to the Beneficiary, including her eventual management of subordinate contractors and employees, remained prospective in nature despite the fact that the Beneficiary was initially granted L-1A status in October 2009. Further, we found that the Beneficiary's ongoing duties related to the planning, research and development of the factory were not primarily executive in nature, as the record did not show that she had staff to relieve her from performing non-qualifying research and administrative duties.

In denying the petition, we also noted that there were some inconsistencies in the record regarding the Petitioner's physical business location. Finally, we noted that the Petitioner, a company originally established as a Nevada limited liability company, but operating in Texas, had a corporate status of "permanently revoked" in the State of Nevada. We advised the Petitioner that it would need to address this corporate status if it chose to pursue this matter further, but noted that neither of these issues formed the basis for the denial of the petition.

The Petitioner's motion to reopen consists of the Form I-290B, Notice of Appeal or Motion, and a letter from its managing CEO. Upon review, has adequately addressed our concerns regarding the Petitioner's location and business address, and its corporate status. Our comments regarding these matters are withdrawn.

[1] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part: "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter I to the contrary, and such instructions are incorporated into the regulations requiring its submission."

However, as to the grounds for denial of the petition, the Petitioner has not submitted "new facts" in support of a motion to reopen. Rather, the Petitioner offers a paragraph-by-paragraph critique of our decision without offering new facts that would overcome our prior decision.
For example, in response to our finding that the Petitioner did not provide evidence that construction of its factory was completed, had begun, or was even imminent, [redacted] states: "How a factory could be built or even started to be built when the Petitioner is relying on the Beneficiary to be granted an L-1 visa? That would be corporate negligence." As we noted in our decision, the Beneficiary in this matter has held an L-1A visa since October 2009 and the Petitioner maintains that she was originally transferred to the United States to perform the duties assigned to her in the instant petition. The Beneficiary has had 5 years to carry out the various stages of researching and developing a new manufacturing facility and, based on [redacted] statement on motion, has not progressed beyond the point of creating a facility plan and costing and evaluating machinery to be purchased in the future.

While we understand that manufacturing workers would be hired upon completion of the build, the Petitioner has not explained how the research duties assigned to the Beneficiary in the interim qualify as executive-level tasks as defined at section 101(a)(44)(B) of the Act or provided evidence that she has staff to assist her with non-executive, operational and administrative aspects of the initial stages of this long-term project. The record shows that the Beneficiary has been given responsibility for a major project, but does not show that her actual day-to-day duties, as of the date of the requested extension and given the progress of the project at that time, were primarily executive in nature. While performing non-qualifying tasks will not automatically disqualify a beneficiary as long as those tasks are not the majority of a beneficiary's duties, a petitioner still has the burden of establishing that a beneficiary will "primarily" performing managerial or executive duties. *See* section 101(a)(44) of the Act.

On motion, the Petitioner emphasizes the value of the Beneficiary's experience with the Petitioner's international organization, her qualifications for the position, and the expected benefits of locating its manufacturing facility in the United States. We did not question the Beneficiary's experience or qualifications or the Petitioner's business decision to eventually build a factory in the United States. Rather, we determined that the evidence of record did not show how this reshoring project could currently support an executive-level employee.

Finally, several of the issues raised in the Petitioner's letter on motion were already reviewed, considered, and thoroughly addressed in our previous decision dismissing the Petitioner's appeal. Therefore, those issues raised in the letter are not new facts satisfying the motion to reopen standard. *See* 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen will be dismissed.

The Petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion will be denied, the proceedings will not be reopened, and our previous decision will not be disturbed.

ORDER: The motion to reopen is denied.

Cite as *Matter of K- Ltd.*, ID# 186764 (AAO Jan. 17, 2017)