U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-T-A-C-, INC.

DATE: JAN. 29, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a company that intends to provide consulting services in the organic agriculture industry, seeks to temporarily employ the Beneficiary as chief operations manager/director of its new office[1] 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.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner had secured sufficient physical premises to house the new office; (2) the Beneficiary had been employed abroad in a managerial or executive capacity; and (3) the Petitioner would employ the Beneficiary in a managerial or executive capacity within one year of approval of the petition.

The Petitioner filed a combined motion to reopen and motion to reconsider. The Director denied both motions without disturbing the initial grounds for denial, after determining that the filing did not meet the requirements of either type of motion. The matter is now before us on appeal. Upon review, we will dismiss the appeal.

Although the Petitioner's brief addresses the Director's initial denial decision, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director's subsequent finding that the motion did not meet the requirements of a motion to reopen, a motion to reconsider, or both. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us is whether the Director properly found that the motion did not meet applicable requirements. A motion that does not meet applicable requirements must be denied. 8 C.F.R. § 103.5(a)(4).

[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.

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. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

Here, while the evidence in support of the Petitioner's motion included newly prepared affidavits from the Beneficiary and from one of the Petitioner's clients, the affidavits did not present new facts regarding the Beneficiary's current foreign or proposed U.S. job duties that were not already submitted and considered by the Director. Other evidence submitted in support of the motion, while technically "new," was not relevant to the Petitioner's eligibility at the time of filing. For example, the Petitioner filed the petition in September 2016 and must show that it had secured sufficient physical premises to house the new office as of the date of filing in order to satisfy the requirement at 8 C.F.R. § 214.2(l)(3)(v)(A). The evidence submitted on motion related to the physical premises that the Petitioner secured after the date of filing, in November 2016, and therefore lacked relevance. Similarly, the Petitioner submitted copies of e-mails between the Beneficiary and a subordinate that post-dated the filing of the petition by more than one year and which were not accompanied by any explanation of how this new evidence would overcome the grounds of ineligibility cited by the Director.

For these reasons, we agree with the Director's determination that the Petitioner did not submit new evidence sufficient to warrant the re-opening of the matter. The Director properly found that the motion did not meet the requirements of a motion to reopen.

A motion to reconsider must establish that the underlying decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

The Petitioner's brief in support of the motion included broad allegations that the Director's decision was "incorrect," but did not contain legal arguments establishing that the denial decision was based upon an incorrect application of law or policy. For example, the Petitioner stated that the Beneficiary's former and proposed job duties are comparable to those of a "Farm Manager" according to the U.S. Department of Labor's (DOL's) O*Net Online resource or to a "General Manager, Farm" according to the DOL's *Dictionary of Occupational Titles*. The Petitioner argued that these occupations require "significant vocational preparation" and therefore the DOL publications support a finding that the duties involved are executive in nature.

However, the Petitioner did not cite to any law or policy that requires USCIS to consider information found in DOL publications in determining whether a given beneficiary would be employed in a managerial or executive capacity as defined under section 101(a)(44) of the Act. A review of the initial denial decision reflects that the Director properly considered a number of relevant factors such

as the Beneficiary's actual job duties with the foreign and U.S. entities, the nature of the respective businesses, their respective staffing levels, and the Petitioner's business plan, in reaching a conclusion regarding the Beneficiary's current and proposed employment in a managerial or executive capacity.

The Petitioner's brief on motion also included a new legal argument, specifically, that the Beneficiary has been employed abroad, and would be employed in the United States, in a managerial capacity, specifically as a function manager, as defined at section 101(a)(44)(A) of the Act. In support of its claim, the Petitioner cited to an adopted decision, *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

In denying the Petitioner's motion, the Director acknowledged the motion included a function manager claim, but found that the Petitioner did not state a clear reason for reconsideration on this basis or establish that the denial decision was based on an incorrect application of law or policy. We agree with this assessment of the function manager claim. The Petitioner's claim was made for the first time on motion; the Petitioner did not contend that the Director misapplied the law pertaining to function managers when adjudicating the petition.

Further, we agree with the Director that the new function manager claim was not supported by sufficient evidence to establish that the Beneficiary had been or would be employed in a qualifying capacity as a function manager. The requirements of a motion to reconsider are only met when the Petitioner is able to show that the decision was incorrect based on the evidence in the record at the time of the decision. The Petitioner's motion to reconsider did not meet these requirements.

For the above reasons, we find that the Director properly concluded that the Petitioner's filing did not meet the requirements of a motion to reopen or a motion to reconsider. Because the Petitioner has established no error in the denial of the motions, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T-A-C-, Inc.*, ID# 1561622 (AAO Jan. 29, 2019)