U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8694067

Date: JULY 10, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a "new office[1]," seeks to employ the Beneficiary as its chief executive officer (CEO) under the L-1A nonimmigrant visa classification for intracompany managers or executives. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Vermont Service Center denied the petition and dismissed the Petitioner's following motions to reopen and reconsider. We dismissed the Petitioner's appeal, then twice dismissed the company's motions to reopen and reconsider. In our last decision, we concluded that, contrary to the Act and Department of Homeland Security regulations, the Petitioner did not demonstrate its proposed employment of the Beneficiary in a managerial or executive capacity, or his employment abroad for at least one continuous year within the three years before the petition's filing. *Matter of K-W- LLC*, ID# 5761610 (AAO Sept. 16, 2019).

The matter is before us again on the Petitioner's motions to reopen and reconsider. The Petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish a decision's misapplication of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. MOTION TO REOPEN

The Petitioner submits copies of three, online advertisements by other companies for CEO positions. The Petitioner's last motion to reopen contained these same ads. We reviewed and considered the ads in our last decision. We found that, combined with all other relevant evidence of record, the ads did

[1] The term "new office" refers to an organization that, at the time of a petition's filing, had been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

not establish the Petitioner's likely employment of the Beneficiary in a primarily managerial or executive capacity within a year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C) (requiring a new office, L-1A petitioner to demonstrate that, within one year of a petition's approval, the business will support an executive or managerial position). Thus, contrary to 8 C.F.R. § 103.5(a)(2), the motion to reopen does not state "new facts." We must therefore dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4) (requiring dismissal of a motion that does not meet applicable requirements).

III. MOTION TO RECONSIDER

A. The Petitioner's Ability to Support a Managerial or Executive Position

The Petitioner asserts that we erred by faulting the company for omitting specific daily tasks from the job duties of the offered position of CEO that the company submitted in response to the Director's written request for additional evidence. The Petitioner contends that "[a] CEO's job duties can only be described in general terms" as "[a] CEO has to be flexible in what he or she does everyday [sic] to carry out the ultimate purpose of the CEO position." The Petitioner asserts that our reasoning "shows that the reviewing officer . . . has no fundamental understanding of how businesses in [the] real world work[]."

We acknowledge that CEOs must remain flexible to respond to daily business problems or opportunities that may arise. An L-1 petitioner, however, must provide "a detailed description of the services to be performed." 8 C.F.R. § 214.2(l)(3)(ii). A petitioner cannot describe the duties of an offered position in vague terms. *See 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) (stating: "Specifics are clearly an important indication of whether [a beneficiary's] duties are primarily executive or managerial in nature, otherwise meeting the definitions [of the terms "executive capacity" or "managerial capacity"] would simply be a matter of reiterating the regulations").

The job duties of the offered position provided by the Petitioner include some executive duties, such as developing business projections and strategies, and implementing company policies. But the record does not provide specific examples of projections, strategies, or policies that the Beneficiary would develop or implement. The Petitioner also did not sufficiently explain how the Beneficiary would develop or implement the projections, strategies, and policies. Thus, the Petitioner's job duties are not specific enough to demonstrate that the Beneficiary would work in a managerial or executive capacity.

On motion, the Petitioner provides a new set of job duties for the offered position. Some of the duties mirror prior ones. But the Petitioner has reorganized prior duties and recalculated the percentages of time the Beneficiary would spend on them. The company has also amended some prior duties and added new ones. For example, the Petitioner indicates that the Beneficiary would perform the prior duty of coordinating the company's public relations. But new information on motion indicates that he will perform this duty "through the oversight of a public relations professional." The Petitioner's proposed organizational chart does not list a public relations professional, let alone one under the Beneficiary's direct oversight. The discrepancies on motion cast doubt on the true job duties of the offered position, the amount of time the Beneficiary would spend on them, and the Petitioner's proposed staff. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

Moreover, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition after its filing in an effort to conform with regulatory requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). For the foregoing reasons, the job duties of the offered position do not support the Beneficiary's proposed employment in a primarily managerial or executive capacity.

The Petitioner also asserts that we erred in doubting its plan to build a warehouse on its property. The company states: "USCIS did not show any evidence in support of its finding." Contrary to the Petitioner's assertion, however, we questioned the plan based on the company's own statements. In a motion filed with the Director, the Petitioner appeared to retreat from its written business plan, which states: "The short-term vision is to build a temporary warehouse facility on the land adjacent to the office building." Instead, the Petitioner stated that: its current property has enough storage space; it could rent additional space; and the "export business does not necessarily need warehousing." Our doubts about the Petitioner's plan to build a warehouse therefore stemmed from evidence of record.

The Petitioner further asserts that we lacked a basis to question its first-year projected revenues of $1,228,000. The company's business plan indicates that the Petitioner would annually generate $300,000 from leasing the office building it owns. Thus, we found that the company anticipated its proposed warehouse/export operations to generate the remaining $928,000 in first-year revenues. Because the company appeared to withdraw its plan to immediately build the warehouse, we questioned its projected amount of additional, first-year revenues.

The Petitioner contends that its business plan details and analyzes its first-year revenue projections. The company states: "The USCIS failed to review the business plan in sufficient detail and jumped to [the] wrong conclusion." But, besides the Petitioner's leasing of office space, the business plan bases the company's projected first-year revenues on its combined exportation of products and leasing of warehouse space to others. The Petitioner has not sufficiently explained how, without a warehouse to lease to others, it would generate the remaining $928,000. *See* section 291 of the Act (requiring a petitioner to demonstrate its eligibility for a requested benefit). The Petitioner has not established the decision's misapplication of law or USCIS policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). For the foregoing reasons, the Petitioner has not demonstrated that, within one year of the petition's approval, it would support the Beneficiary in a primarily managerial or executive capacity.

B. The Beneficiary's Employment Abroad

The Petitioner asserts that we erred in questioning the Beneficiary's employment abroad for at least one continuous year in the three years before the petition's filing. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A) (defining the term "intracompany transferee"). The Petitioner acknowledges that, while on the foreign entity's payroll, the Beneficiary spent more than two-thirds of the relevant three-year period in the United States as a business visitor. But the company contends that we misinterpreted 8 C.F.R. § 214.2(l)(1)(ii)(A).

In relevant part, the regulation states:

> Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

8 C.F.R. § 214.2(l)(1)(ii)(A).

The Petitioner argues that, because the Beneficiary remained in the United States for prolonged parts of the three-year period, he did not make "brief trips" to the country as described in the regulation. The company therefore contends that the provision does not bar him from establishing one year of employment abroad.

The Act, however, indicates that an L-1 beneficiary must have spent at least one continuous year within the prior three-year period *outside* the United States. The Act requires that an intracompany transferee be not only one "who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year," but also one "who seeks to enter the United States temporarily." Section 101(a)(15)(L) of the Act. "[T[he two requirements evince congressional intent that the requisite one year of continuous employment take place *abroad*." *Karmali v. INS*, 707 F.2d 408, 411 (9th Cir. 1983) (emphasis in original).

USCIS policy also requires the one continuous year of L-1 qualifying employment to occur outside the United States.

> The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for the petitioner or a qualifying organization. A petitioner cannot use any time that the beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ the beneficiary while he or she was in the United States.

USCIS Policy Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* 3 (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda (last visited July 1, 2020).

The Petitioner's interpretation of 8 C.F.R. § 214.2(l)(1)(ii)(A) conflicts with congressional intent and USCIS policy. Thus, we will reject the company's argument. The Petitioner therefore has not demonstrated the Beneficiary's qualifying employment abroad.

C. The Petitioner's Request to Change the Beneficiary's Status

Finally, the Petitioner seeks to change the Beneficiary's nonimmigrant status from business visitor to L-1A. The Petitioner asks us to excuse the petition's untimely change-of-status request based on "extraordinary circumstances" beyond the control of the company and the Beneficiary. *See* 8 C.F.R. § 214.1(c)(4) (granting USCIS discretion to excuse a failure to file a petition before the expiration of a beneficiary's prior authorized status). As indicated in our appellate decision, however, we lack authority to review denial of a requested change of status. *See* 8 C.F.R. § 248.3(g) (barring appeal

from the denial of a change-of-status application). We therefore cannot consider the Petitioner's change-of-status request. Also, as previously discussed, the Petitioner has not demonstrated eligibility for the requested L-1A status.

IV. CONCLUSION

The Petitioner's motion to reopen does not meet regulatory requirements. The company's motion to reconsider does not establish our last decision's misapplication of law or USCIS policy, or the petition's approvability. We will therefore affirm the petition's denial.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.