U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-W- LLC

DATE: JULY 11, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a real estate and export business, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) 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 based on three grounds. We dismissed the appeal and denied a subsequent motion to reopen and reconsider. We found that the Director correctly declined to treat the Petitioner as a new office; we therefore withdrew the finding that the Beneficiary had not been doing business. We also withdrew our prior adverse finding on the issue of the Petitioner's qualifying relationship with the Beneficiary's foreign employer. Notwithstanding these two withdrawals, we affirmed the prior adverse findings regarding the Beneficiary's proposed employment in an executive capacity and the Beneficiary's employment abroad in a managerial or executive capacity for one year during the three-year period prior to filing the instant petition.

On motion, the Petitioner asserts that we "missed the point of the petition," contending that the purpose of the filing was "to correct an inadvertent mistake" on a previously filed new office petition. The Petitioner asserts that its argument on doing business has been upheld by "the courts."

Upon review, we will deny the combined motion to reopen and motion to reconsider.

I. MOTION REQUIREMENTS

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 must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The primary issue to be addressed in this decision is whether the Petitioner has offered new relevant facts supported by credible evidence or made arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy with respect to the facts of this case. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, June 2017) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Here, the subject of the prior decision was our denial of the Petitioner's first motion to reopen and reconsider. As such, the purpose of this decision is to examine any new facts and supporting evidence that pertain to the denial of that motion and to consider arguments establishing that our denial of the motion was based on a misapplication of law or USCIS policy.

A. Motion to Reopen

In denying the prior motion to reopen, we determined that the Petitioner did not offer new facts or provide evidence in support of new facts. Although the Petitioner provides a legal brief in support of this motion, it does not offer new facts or supporting evidence to establish that we incorrectly denied the prior motion based on the record as constituted when that motion was adjudicated. Therefore, the Petitioner has not shown proper cause for reopening.

B. Motion to Reconsider

In support of the motion to reconsider, the Petitioner first addresses the issue of doing business, contending that we erred in finding that the Petitioner's collection of rent from its commercial property tenants constituted doing business. Although the Petitioner claims that "the courts" have issued decisions that contradict our finding, it does not specifically cite to any cases to support this claim, nor has it otherwise submitted evidence to establish that our determination on the issue of doing business was based on a misapplication of the law or USCIS policy. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Next, the Petitioner addresses the Beneficiary's foreign employment, arguing that we incorrectly interpreted the regulations to mean that the Beneficiary's foreign employment must have taken place outside of the United States; the Petitioner contends that the term "abroad," as used in the regulations, does not refer to the Beneficiary's physical presence, but rather to the location of the job position itself. In other words, the Petitioner contends that the Beneficiary can satisfy the foreign employment requirement, regardless of where he is physically during the term of that employment, so long as the position itself is with the foreign entity. The Petitioner offers an article on the frequency of teleworking to support the assertion that an individual's physical location can be removed from the place of the actual position, given the modern technological advances in telecommunication. The Petitioner's interpretation, however, is inconsistent with the regulations, which expressly state that

while brief periods of time spent in the United States for business or pleasure "shall not be interruptive" of the Beneficiary's period of employment abroad, "such periods shall not be counted toward fulfillment of [the foreign employment] requirement." 8 C.F.R. § 214.2(l)(1)(ii)(A). In other words, use of the term "abroad" within the context of the regulations relates to the Beneficiary's actual physical presence with respect to the United States in that the Beneficiary is required to be physically outside of the United States during the claimed period of employment abroad in order for that time to count towards the one-year requirement. As the Petitioner does not offer precedent case law to support its own interpretation of the term "abroad," it has not demonstrated that our decision, which is consistent with the regulatory provisions, was based on a misapplication of law or USCIS policy.

Lastly, with regard to our determination on the issue of the Beneficiary's proposed employment in an executive capacity, the Petitioner restates the Beneficiary's job duty breakdown, broadly claiming that "meetings one after another" consume a considerable portion of a CEO's daily activities. The Petitioner asserts that we "errored [*sic*] in assuming that CEOs has [*sic*] specific tasks everyday [*sic*]" and that we should not have asked for the Beneficiary's specific job duties. We note, however, that the Petitioner's arguments are inconsistent with certain provisions in the regulations, which expressly state that the Petitioner "shall" submit evidence, which is to include "a detailed description of the services to be performed." 8 C.F.R. § 214.2(l)(3)(ii). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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). The Petitioner has not cited to precedent case law to support its own contentions, which contradict our decision and also appear to contradict the relevant regulatory provisions.

In sum, while we acknowledge that the Petitioner disagrees with our denial of the motion to reconsider, it has not provided evidence establishing that the findings in our prior decision were based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Therefore, the Petitioner has not shown cause for reconsideration.

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. Because the Petitioner has not shown proper cause for reopening or reconsideration, it has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of K-W- LLC*, ID# 3988208 (AAO July 11, 2019)