U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 4RR-E-I- CORP

DATE: JULY 18, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, which is described as a construction equipment exporter and real estate leasing and management company, seeks to continue the Beneficiary's temporary employment as its general 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 of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner would employ the Beneficiary in a managerial or executive capacity under the extended petition. We dismissed the Petitioner's appeal and denied two motions to reopen and one motion to reconsider. Most recently, we denied the Petitioner's second motion to reopen.

The matter is now before us again on a motion to reconsider. The Petitioner asserts that its motion to reopen met the applicable requirements and that we erroneously denied it.

Upon review, we will deny the motion to reconsider.

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 reconsider must establish that we based our decision on an incorrect application of law or policy. Specifically, a motion to reconsider must (1) state the reasons for reconsideration and (2) be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. 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 issue in this matter is whether the Petitioner has established that we incorrectly applied the law or policy in denying its immediate prior motion to reopen.

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

In its brief, the Petitioner suggests that we misapplied the law pertaining to motions to reopen in our prior decision. Specifically, the Petitioner states:

> [T]he AAO stated: "The Petitioner has not shown proper cause for reopening." However, there is a contradiction because the AAO correctly acknowledged that [the Petitioner's] motion to reopen was submitted with new evidence. In fact, in its decision dated November 15, 2018, the AAO stated: "Although the current motion includes newly submitted evidence in the form of 2017 tax documents and an updated organizational chart that reflects employees hired after the filing of the petition, such evidence is not relevant for the purpose of establishing the Petitioner's eligibility at the time of filing, and therefore it will not be addressed."

The Petitioner respectfully requests that we "carefully review the evidence" submitted with the prior motion and withdraw our decision. However, our prior decision reflects that we did review the evidence and clearly explained why such evidence was either not "new" or not relevant.

The documents submitted in support of the motion to reopen included, among other items, a company letter, employee job duty breakdowns, and a "Certification Letter." We observed that all three documents were identical in content to evidence that was previously submitted at various stages of this proceeding. As explained above, resubmission of previously submitted evidence does not satisfy the Petitioner's burden to submit "new facts" in support of a motion to reopen.

Further, as noted by the Petitioner, we acknowledged the Petitioner's submission of its 2017 tax documentation and an updated organizational chart. However, we also explained in our decision that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing (in this case August 2016) and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Therefore, new evidence that post-dates the filing of the petition is not relevant to the Petitioner's eligibility at the time of filing, and does not show proper cause for reopening.

The Petitioner states that our decision appeared to include a "contradiction," but it does not further develop its argument or explain how we misapplied the law pertaining to motions to reopen. Nor has it demonstrated that it submitted relevant new facts in support of the prior motion that warranted reopening the matter. Accordingly, the Petitioner has not shown proper cause for reconsideration.

III. CONCLUSION

The motion to reconsider will be denied for the above stated reasons. 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. The Petitioner has not met that burden.

ORDER: The motion to reconsider is denied.

Cite as *Matter of 4RR-E-I- Corp*, ID# 3773140 (AAO July 18, 2019)