U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-T- INC.

DATE: JULY 26, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an import/export company that also provides information technology services, seeks to continue the Beneficiary's temporary employment as its chief executive officer and president under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 California Service Center approved the petition, but later revoked the approval, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. Citing discrepancies in the record and information obtained during an on-site inspection, the Director determined that the Petitioner is not conducting the full range of business activities which had formed the basis of the petition. The Petitioner filed a joint motion to reopen and reconsider, which the Director denied.

The matter is now before us on appeal. In its appeal, the Petitioner resubmits exhibits and arguments submitted previously, and asserts that the Director erred by not granting the joint motion.

We will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

The Petitioner did not appeal the revocation order itself. Rather, the Petitioner appealed 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 revocation order, and of the underlying petition, are not currently before us. The only issue before us is whether the Director properly found that the motion did not meet applicable requirements.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 11, 2015, until February 10, 2016. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 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). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, 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."

In denying the motion to reopen, the Director briefly described the evidence submitted on motion, and noted that most of this evidence was already in the record. While some of the evidence was newly submitted, the Director concluded that this evidence amounted to "supplemental information" rather than "new facts."

The newly submitted evidence, however, directly addressed findings in the revocation notice. The Director previously found that the Petitioner had not submitted evidence that it had "been actively importing, marketing, and selling . . . tea pots," and that the Petitioner had "been actively providing computer integration and software development services." The evidence newly submitted on motion includes invoices showing that the Petitioner imported and sold tea pots in 2015, and provided "network service" or "network setup service" to five clients between July 2015 and July 2016. These invoices do not simply restate previous assertions. Rather, they seek to address and rebut specific findings in the revocation notice. The Director must address this evidence and determine whether it shows, as the Petitioner claims, that the tea pot trade and computer services are each "still a very active line of business for the company."

Because the Director has not yet addressed the merits of the motion to reopen, the proceeding is not ripe for us to consider the merits of the evidence submitted on motion or with the underlying petition. We have overruled the Director's finding that the evidence is not "new," but the Director must make the determination as to whether the newly submitted evidence overcomes the grounds for revocation.

Because we find that the Petitioner filed a proper motion to reopen, we need not address here the separate motion to reconsider, which concerns the question of whether the underlying decision was incorrect based on the evidence in the record of proceedings at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3).

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of T-T- Inc.*, ID# 1496207 (AAO July 26, 2018)