U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-G-S-A-, LTD.

DATE: JULY 31, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a shipping company, seeks to temporarily employ the Beneficiary as its operations director 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) a qualifying foreign company had continuously employed the Beneficiary for at least one year out of the three years immediately preceding the filing of the petition; (2) the Beneficiary had been employed abroad in an executive capacity; and (3) the Petitioner would employ the Beneficiary in the United States in an executive capacity. We dismissed the Petitioner's appeal, and also found that the Petitioner had willfully misrepresented material facts relating to the Beneficiary's employment history.

The Petitioner subsequently filed a combined motion to reopen and reconsider, which we denied. The matter is now before us on a second combined motion to reopen and reconsider. On motion, the Petitioner submits additional evidence, disputes the underlying denial and dismissal notices, and asserts that there was no misrepresentation relating to the Beneficiary's employment abroad.

We will deny both motions.

I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We will discuss the requirements of each type of motion below. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen the proceeding to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting

the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our decision was based on an incorrect application of law or 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). 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.

On motion, the Petitioner raises several objections to findings in the Director's August 2016 denial notice and our April 2017 dismissal notice, relating to the various grounds for denial of the underlying petition.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reconsider the denial of the petition, or to reconsider the dismissal of the appeal. It is a motion to reconsider our prior decision on motion. We will not consider new objections to the earlier denial or dismissal decisions, because the filing deadline has passed for motions to reconsider those decisions, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

In our prior decision, we denied the Petitioner's motion to reconsider, stating:

> [T]he Petitioner disputes our factual findings but does not explain how these findings were incorrect in the context of the evidence in the record at the time of our prior decision. Instead, the Petitioner relies on new evidence – some submitted on motion, and some to be submitted at an unspecified future date.

The Petitioner does not show that the above characterization was incorrect. The Petitioner identifies no relevant errors of fact or law in our prior motion decision, issued in November 2017.[1] Therefore, the latest filing does not meet the requirements of a motion to reconsider.

III. MOTION TO REOPEN

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner has

[1] The Petitioner asserts that we misconstrued the basis for the Petitioner's request for an extension of time, but this asserted error did not affect the outcome of the decision. As we noted in our prior decision, there exists no provision for granting extensions, regardless of the reason, in order to supplement a motion after it has been filed. Therefore, our asserted misidentification of the grounds for the extension request is without practical effect and did not prejudice the outcome of the prior decision.

submitted some evidence that is new to the record. For the reasons explained below, however, we find that this evidence does not warrant reopening of the proceeding or approval of the petition.

A key finding in this proceeding is that the Petitioner misrepresented the Beneficiary's employment between 2013 and 2015. The initial record indicated that the Beneficiary worked for [redacted] from August 2009 to April 2013, and for the Petitioner's foreign subsidiary, [redacted] since May 2013. The timing of the Beneficiary's employment with TPS is material because the Beneficiary had to have accrued at least one continuous year of qualifying employment abroad with TPS before she entered the United States in November 2015. *See* 8 C.F.R. § 214.2(l)(3)(iii). The Petitioner has not claimed or established that [redacted] has a qualifying relationship with the Petitioner as a parent, subsidiary, or affiliate, and therefore the Petitioner must show that the Beneficiary worked abroad for [redacted] for at least a year during the statutory three-year period prior to the filing of the petition.

We concluded that the Petitioner had misrepresented the starting date of the Beneficiary's employment with TPS, based on the following factors:

- In June 2014 and again in June 2015, the Beneficiary filed nonimmigrant visa applications at the U.S. Consulate in [redacted] China. Both times, she identified her employer as [redacted] and did not mention [redacted]
- A June 2015 employment contract between the Beneficiary and [redacted] referred to a 30-day "probationary period," consistent with initial employment.
- The Beneficiary's [redacted] record showed that payments from [redacted] began in June 2015.
- The Petitioner had not submitted verifiable, contemporaneous documentation of the Beneficiary's employment with [redacted] before 2015. "Wage Lists" dated 2013 were created after the fact, with several months of wage data per page.

The latest motion includes new evidence which the Petitioner claims to have recently received from China. The Petitioner submits various local tax documents, which, the Petitioner claims, show tax payments that derived from the Beneficiary's employment for [redacted] between 2013 and 2016. The Petitioner acknowledges, and the documents show, that the [redacted] payments were actually made on June 20, 2017, after we made our finding of misrepresentation in April 2017. Likewise, local Tax Payment Certificates for [redacted] show payment of four years' worth of back taxes on July 6, 2017. By paying these taxes in 2017, the Petitioner has essentially stipulated that contemporaneous tax records do not exist for the claimed employment in question.

Documents created after an adverse determination cannot carry the same weight as true contemporaneous documentation (which remains absent from the record). The delayed payment of the local taxes, years after the claimed employment but soon after we first made our finding of misrepresentation, raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa

proceedings). We conclude that the tax payments were intended to create the appearance of past employment, but do not serve as evidence of that employment.

The Petitioner submits copies of what purport to be various contracts and other documents that the Beneficiary signed or executed while working for [redacted] between 2013 and 2015, along with newly submitted payroll documents. These internally-generated materials are less amenable to independent verification than government records, and as we have seen, the Petitioner (or others acting on the Petitioner's behalf) created the government records after the fact by paying taxes in 2017 and attributing them to previous years. Under the circumstances of their submission, the newly submitted [redacted] documents lack the evidentiary weight to overcome our finding of misrepresentation.

An unsigned letter attributed to [redacted] attempts to address the 30-day probationary period in the Beneficiary's May 2015 contract:

> [The Beneficiary] signed [a] two-year *Labor Contract* with our company on May 31, 2013, and concurrently reached an agreement that if [her] performance[] met our company's requirements after the expiration of the two-year contract, then our company [would] sign another permanent labor contract with her. . . . Therefore, after the expiration of the above-mentioned contract, both parties signed another Labor Contract without fixed-term in June 2015, and set a probation period in it.
>
> The above-mentioned arrangement is made based [on] Chinese laws and regulations and relevant human resource management policy of our company.

The letter did not identify the "Chinese laws and regulations" that require a probationary period for established employees. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

The Petitioner has not submitted reliable, contemporaneous, and independently verifiable documentary evidence to overcome our finding of willful misrepresentation of a material fact. Therefore, we will not disturb that finding.

Because the Petitioner has not credibly established that the Beneficiary worked for [redacted] for at least one continuous year before the petition's filing date, we need not discuss the merits of the Petitioner's claim that that employment was in an executive capacity; less than a year of continuous employment would be non-qualifying, whatever the nature of that employment.

IV. CONCLUSION

The Petitioner did not submit new evidence which overcame our prior findings or otherwise established eligibility. The Petitioner also did not establish that our prior decision was in error when we issued it.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-G-S-A-, Ltd.*, ID# 1547951 (AAO July 31, 2018)