U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C- INC.

DATE: JUNE 19, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a clothing wholesaler, seeks to extend the Beneficiary's temporary employment as its general manager 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: (1) that the Petitioner has a qualifying relationship with the Beneficiary's employer abroad (in India); (2) that the Beneficiary had been employed abroad in a managerial or executive capacity; and (3) that the Beneficiary would be employed in a managerial or executive capacity in the United States under the extended petition.

The matter is now before us on a third combined motion to reopen and reconsider. The Petitioner submits some documentation in support of the motion, some of which is new and some of which was already in the record, and requests that the petition be approved.

Upon review, we will deny the combined motion.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by 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 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

In our previous decision we noted that no new facts or evidence had been submitted to address the issues of (1) whether the Beneficiary had been employed abroad in a managerial or executive capacity and (2) whether the Beneficiary would be employed in a managerial or executive capacity in

the United States, which were two of the three grounds for the Director's denial of the extension petition and our subsequent motion denials. Accordingly, we found that the Petitioner had not shown proper cause to reopen either of these issues. As for the third issue of a qualifying relationship between the Petitioner and the Beneficiary's employer in India, we found that the documentation submitted with the prior motion did not resolve the evidentiary discrepancies regarding the ownership of these two entities. While the Petitioner asserted that the Beneficiary is the sole owner of the foreign entity and that the foreign entity is the sole owner of the Petitioner, conflicting documentation in the record indicated that the Beneficiary was only a half owner of the foreign entity and that the Petitioner was owned by the Beneficiary rather than the foreign entity. We noted that the Petitioner had not submitted three items of evidence we identified in our previous decision as needed to establish the ownership of the Petitioner – specifically, the Petitioner's articles of incorporation, its stock ledger, and copies of all issued stock certificates.

A. Motion to Reopen

In its current motion the Petitioner does not submit any of the three documents identified in our previous decision, or any other pertinent evidence, that could resolve the issue of who owns the Petitioner. Nor does any of the documentation newly submitted by the Petitioner resolve the conflicts in the record as to who owns the foreign entity in India. The only materials relating to the Petitioner are some invoices, purchase orders, a credit availability report, and an excerpt from a New York State government database in 2013 recording the Petitioner's status as "active." None of these documents contain any information about the Petitioner's ownership. In short, the Petitioner submits no new fact(s) or relevant evidence in the current motion to alter our previous finding that the record does not establish a qualifying relationship between the Petitioner and the Beneficiary's foreign employer. As in its previous motion, the Petitioner does not even address the other two grounds for the petition's denial – namely, that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity and would be employed in a managerial or executive capacity in the United States. Accordingly, we will deny the motion to reopen.

B. Motion to Reconsider

The Petitioner does not allege that our prior decision dismissing the second combined motion to reopen and reconsider was based on any incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3). Therefore, we will deny the motion to reconsider.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not shown proper cause for reopening or reconsideration. In visa 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 reopen is denied.

FURTHER MOTION: The motion to reconsider is denied

Cite as *Matter of S-C- Inc.*, ID# 4422067 (AAO June 19, 2019)