U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF A-S-A- INC.

DATE: JUNE 22, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a food supply and restaurant equipment import and export business, seeks to temporarily employ the Beneficiary as the president of its new office under the L-1A nonimmigrant classification. *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 an executive or managerial capacity.

The California Service Center Director denied the petition.[1] The Petitioner appealed the denial which we dismissed, finding that the Petitioner had not established that: (1) the Beneficiary had been employed abroad in a managerial or executive capacity or that his employment with the qualifying foreign entity had been on a full-time basis for at least one year in the three years preceding the filing of the petition; and (2) the new office would support a managerial or executive position within one year after approval of the petition.

The matter is before us on a motion to reconsider. In its motion to reconsider, the Petitioner asserts that it has satisfied the requirements to establish eligibility by a preponderance of the evidence. We will deny the motion.

## I. MOTION REQUIREMENTS

To merit 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 is based on legal grounds and must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision was based on an

[1] The Director found, in part, that the Petitioner did not submit evidence that the Beneficiary's services are to be used for a temporary period and that it intended to transfer him abroad upon completion of his temporary stay. We withdrew the Director's determination with respect to this issue only.

incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

## II. ANALYSIS

### A. Beneficiary's Employment Abroad in a Managerial Capacity

In our previous decision, we affirmed the Director's finding that the record did not demonstrate that [redacted] and the Petitioner have a qualifying relationship; thus, his duties for [redacted] could not be used to establish the Beneficiary's employment abroad in a managerial capacity.[2] On motion, the Petitioner reiterates that the Beneficiary owns an interest in [redacted] with his brothers and asserts that the partial ownership by the same set of brothers shows they have common ownership, so the Beneficiary's position with [redacted] "should be extended to the Petitioner, in fact." The Petitioner does not identify any pertinent precedent decisions that demonstrate that the Beneficiary's 20 percent minority interest in [redacted] and his 100 percent interest in the Petitioner establish a qualifying relationship between the two entities, as defined by the pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii). Accordingly, the Beneficiary's work for [redacted] may not be considered in the managerial capacity analysis.

The Petitioner cites the same unpublished decisions referenced on appeal in support of its alternative claim on motion that (1) the Beneficiary performs in a managerial capacity for [redacted], and (2) [redacted] has a qualifying relationship with the Petitioner. We discussed the lack of applicability of the non-precedent decisions in our appeal decision. Additionally, we found in our previous decision that the Petitioner did not submit sufficient evidence to establish that most non-managerial activities for the foreign employer were assigned to subordinate staff. We also determined that the Petitioner had not specified the amount of time the Beneficiary dedicated to his duties at [redacted], thus raising questions as to whether the Beneficiary was employed full-time at [redacted]. The Petitioner does not address these deficiencies in the record and does not include pertinent precedent decisions to establish that our decision was based on an incorrect application of law of policy and that our decision was incorrect based on the evidence of record at the time of the initial decision, on motion. The Petitioner has not established that the Beneficiary, more likely than not, is employed in a full-time managerial capacity for a qualifying foreign entity in this matter.

### B. U.S. Employment in a Managerial or Executive Capacity

In our previous decision, we found that the record did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of approval of the petition or that

[2] The Beneficiary owns a 100 percent interest in the Petitioner. The Petitioner contends that [redacted] is one of several different entities that are all partially owned by the same set of brothers, including the Beneficiary, and thus is a qualifying organization. The Petitioner asserts in the alternative that it has demonstrated that the Beneficiary held a managerial position with the "parent company."

the new office would grow to the point where it would support a managerial or executive position within one year.

On motion, the Petitioner asserts that it has submitted detailed job duties for the new office and that it fully expects that once the operations of the business are in full force, it will in fact be able to support a manager or executive, within one year of visa approval. In our previous decision we thoroughly detailed the deficiencies in the record regarding the Beneficiary's proposed position, the Petitioner's staffing, and its business plan. The Petitioner does not address these deficiencies on motion. Rather, the Petitioner disagrees with our analysis and notes that it has been waiting for the outcome of this petition to commence extensive operations. The Petitioner does not offer a cogent analysis of how our decision was incorrect based on the evidence of record at the time of the initial decision.

The Petitioner also asserts on motion that it has established the eligibility requirements for this visa petition by a preponderance of the evidence; that is that its claims are "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the limited evidence in the record did not support a realistic expectation that the Petitioner would be staffed and able to support the Beneficiary in a qualifying managerial or executive capacity within one year of approval of the petition. The Petitioner does not offer any argument supported by pertinent precedent decisions to establish otherwise.

## III. CONCLUSION

The Petitioner has not established that our prior decision was incorrect at the time of that decision. Therefore, the Petitioner has not shown proper cause for reconsideration.

**ORDER**: The motion to reconsider is denied.

Cite as *Matter of A-S-A- Inc.*, ID# 433656 (AAO June 22, 2017)