U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF BLTB-A- INC.

DATE: MAR. 14, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a plastic materials and products importer and exporter, seeks to continue the Beneficiary's temporary employment as its operation manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. The Petitioner subsequently appealed the Director's decision and we dismissed the appeal.

The matter is now before us on a combined motion to reopen and motion to reconsider. The Petitioner submits a brief and additional evidence in support of its claim that the Beneficiary will perform primarily managerial or executive duties under the extended petition. Upon review, we will deny the combined motion.

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 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 we based our decision 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. A petitioner must support its motion to reconsider with a

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period April 21, 2016, until March 6, 2017. 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.

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. 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 primary issue in this matter is whether the Petitioner has submitted new facts, evidence, or arguments to establish that the Beneficiary would be employed in a managerial or executive capacity, as defined at section 101(a)(44) of the Act. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, February 2017) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For the reasons discussed below, we will deny the motion to reopen and the motion to reconsider. While the current motion includes newly submitted evidence and citations to case law, the Petitioner has not explained the significance of the new evidence or specified how we incorrectly applied the law and USCIS policy to the facts presented. Accordingly, the Petitioner has not shown proper cause for reopening or reconsideration.

A. Previous AAO Decision

In dismissing the Petitioner's appeal, we determined that the Petitioner provided an overly general job description that did not sufficiently explain the nature of the Beneficiary's day-to-day tasks or establish that she would perform primarily managerial or executive duties. We also discussed the staffing of the operations department headed by the Beneficiary, which includes an operations assistant and an assistant, and determined that the Petitioner had not established that either subordinate employee occupies a managerial, supervisory, or professional position. Therefore, we determined that the evidence did not establish that the Beneficiary would be more than a first-line supervisor of non-professional personnel, and could not qualify as a personnel manager.

We also reviewed the record to determine whether the Beneficiary qualified, in the alternative, as a function manager, but found insufficient evidence to establish to what extent her subordinates perform the non-qualifying duties associated with the Petitioner's operations department and the supply chain functions it handles. We noted that the Petitioner provided a vague position description for one subordinate, and no position description for the other. Finally, we determined that the Petitioner did not establish that the organizational structure in place at the time of filing was sufficient to support an executive-level position in the operations department or to allow the Beneficiary to allocate her time primarily to the broad goals and policies of the organization, rather than the day-to-day duties of her department.

B. Motion to Reopen

On motion, the Petitioner submits a brief and five exhibits in support of its motion to reopen. The first two exhibits include a company profile for the Petitioner's parent company and evidence of its

contracts with major corporations. While these exhibits provide additional information regarding the nature and scope of the parent company's operations, they are not directly relevant to our analysis of the Beneficiary's position within the U.S. company.

The Petitioner also submits a contract, proposal, and debit note (which includes the Beneficiary's) name, as evidence that she was responsible for engaging a third-party to complete impact and vibration quality testing for its ' container products. However, this evidence does not provide further insight into the nature of the Beneficiary's regular day-to-day duties and it is unclear what her involvement in this process was as her name appears only on the "Attn:" line on the debit note.

The Petitioner's fourth exhibit provides examples of tasks performed by an employee named who the Petitioner states is the Beneficiary's subordinate within the operations department. The attached documents, dated from May to October 2017, are described as "business correspondence with customers, handling shipment pre-arrival notices and quotations" and are intended to show that "carries out day-to-day [duties] at the operation department." The Petitioner did not employ at the time of filing,[2] and did not mention her name previously. Also, it is unclear which position she holds in the operations department or which employee, if any, she replaced.

In dismissing the appeal, we noted that the Petitioner submitted an overly general position for the "operation assistant" within the Beneficiary's department (then held by , and no position description for the subordinate "assistant" position held by As such, we could not determine how work was distributed within the department or to what extent the two subordinate employees would relieve the Beneficiary from performing non-qualifying duties. The newly submitted evidence of duties performed by an employee who was likely hired after the denial of the petition, and whose job title has not been provided, is insufficient to overcome the deficiencies we noted in our decision. We did not question whether the Beneficiary's subordinate staff would perform some day-to-day duties of the department. Rather, we noted that the Petitioner's general descriptions of the work performed by the Beneficiary and her staff made it difficult to discern to what extent the Beneficiary would be able to spend her time on managerial duties. Further, as noted, the Petitioner did not provide evidence that either of the Beneficiary's subordinates held a managerial, supervisory, or professional position, and the new evidence does not address this issue.

The final exhibit includes photographs of the Beneficiary meeting with management staff of a logistics company, and copies of invoices from three other companies that provide logistics services for the petitioner. All of this evidence also post-dates the filing of the petition. While the photographs support the Petitioner's claim that the Beneficiary is the senior employee in the operations department with authority to negotiate for services, this new evidence does not provide any further insight into the nature of her day-to-day duties.

[2] The Petitioner provided evidence that it employed a at the time of filing, but the record indicates that this individual uses the name " and was hired for the position of operations assistant in January 2017.

We now turn to the Petitioner's brief, in which it acknowledges our finding that the Beneficiary's duties were insufficiently detailed. The Petitioner adds some additional information to the job description it had provided on appeal.

However, some of these new details do not appear to be consistent with its previous claims regarding the functions performed by the operations department. For example, on appeal, the Petitioner stated that the Beneficiary spends 20% of her time directing the operations department, which "handles the supply chain function and system, which entails the planning and management of all activities involved from sourcing and procurement, including purchasing materials, inventory planning, to all logistics management activities . . . ." On motion, the Petitioner states that this portion of her time is spent directing lower level staff in devising a quality control manual and system for manufactured products, adhering to certification programs, monitoring equipment used to ship, store, and deliver products to customers, impact testing, and reporting of testing data. On its face, this new information appears to indicate that the operations department performs an entirely different set of departmental activities, and it does not assist in establishing the nature of the Beneficiary's actual day-to-day duties at the time of filing.

The Petitioner also reiterates that the Beneficiary spends a total of 30% of her time "assisting the president" and "to the overall operation of the company." Here, the Petitioner notes that due to increased turnover, the company requires the Beneficiary to be fluid with job duties, but it does not add additional detail as to what these duties would entail. Overall, the additional details included in the job description submitted on motion do not overcome the deficiencies noted in our prior decision. Therefore, despite its submission of new facts and evidence, the Petitioner has not shown proper cause to reopen the proceeding.

C. Motion to Reconsider

In support of its motion to reconsider, the Petitioner cites to *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), and asserts that we erred by focusing on size of the Beneficiary's subordinate staff and the small size of the U.S. company, but did not consider the role of the petitioning company in terms of the broader corporate organization. The Petitioner notes that "[the Beneficiary's] duties as an Operations Manager supports the company's expansion efforts in the global arena to become a leader in the production and distribution of bulk container packaging." The Petitioner maintains that the Beneficiary, like the beneficiary in *Matter of Z-A-*, can rely on her "subordinates in the United States and at the foreign entity" to "carry out the majority of the day-to-day tasks that are required."

As noted above, the record continues to contain insufficient evidence of the nature of the Beneficiary's specific duties, the day-to-day duties of the Beneficiary's subordinates at the time of filing, and the overall purpose and activities of the operations department she manages. Further, the Petitioner has not previously claimed that the Beneficiary has subordinates at the foreign entity and does not elaborate on this new claim, nor has it previously placed any emphasis on the Beneficiary's senior role within the wider qualifying organization. Therefore, the Petitioner's claim that the facts of this case are very similar to those in *Matter of Z-A-* are not persuasive.

In dismissing the appeal, we considered the totality of the evidence including the factors mentioned in *Matter of Z-A-*, which include the Beneficiary's job duties along with the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other evidence contributing to understanding a beneficiary's actual duties and role in a business. *See id.* The Petitioner has not shown how we misapplied USCIS policy or this adopted decision to the facts presented.

Finally, the Petitioner cites *Gasboy Tex., Inc. v. Upchurch*, 2004 WL 396257 (N.D. Tex.), in which the U.S. District Court did not give us due deference because the administrative record was "shoddy" and haphazardly assembled and because we did not address a letter submitted by the petitioner. The Petitioner does not establish how the facts of that case are analogous to those presented here. Additionally, in contrast to the broad precedential authority of the case law of a U.S. circuit court, we are not bound to follow the published decision of a U.S. district court in matters arising within the same district. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

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

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen the proceeding or proper cause for reconsideration.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of BLTB-A- Inc.*, ID# 1143967 (AAO Mar. 14, 2018)