U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- INC.

DATE: MAR. 15, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an exporter and wholesale distributor of weather instruments, seeks to extend the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees. *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 Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it will employ the Beneficiary in a managerial capacity. We dismissed the Petitioner's appeal, and denied its subsequent motion to reopen. Most recently, we denied the Petitioner's motion to reconsider, finding that the Petitioner did not establish that our prior decision was based on an incorrect application of law or policy.

The matter is now before us on another motion to reopen. The Petitioner submits additional evidence and asserts that the preponderance of the evidence supports its claim that the Beneficiary will be employed in a managerial capacity. Upon review, we will deny the 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

At issue in this matter is whether the Petitioner has submitted new facts on motion which establish that the Beneficiary would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

As noted, we have issued three decisions to date. In dismissing the appeal, we considered the Beneficiary's job description, the roles of his three subordinates, the nature of the company's wholesale export business, and the Petitioner's claim that some non-managerial functions are assigned to independent contractors and employees of its foreign parent company. We explained why the Beneficiary's job description was insufficient to establish that his duties would be primarily managerial in nature. In addition, while the Petitioner employed three other workers, the record did not show that these employees were managerial, supervisory, or professional staff, or that they would relieve the Beneficiary from significant involvement in the day-to-day operations of the business. Finally, we found that the Petitioner did not provide evidence to support its claim that the Petitioner relied on the services of independent contractors or its foreign parent company's staff to assist with the day-to-day operations of the business.

The new evidence submitted with the first motion to reopen established that the company used the services of an accountant and freight forwarder at the time of filing, but did not address or overcome the other deficiencies addressed in our appellate decision. Therefore we denied that motion, along with the Petitioner's subsequent motion to reconsider, which did not establish that our decision was based on an incorrect application of law or policy.

The Petitioner's current motion to reopen, which includes a letter and 16 exhibits, closely resembles its first motion to reopen. Much of the evidence, including the company's 2016 tax return and IRS Form W-2s, state quarterly wage reports from 2016 and 2017, recent employee paystubs, and copies of supplier and sales invoices from 2017, cannot establish eligibility at the time the underlying petition was filed in February 2015. While some of this evidence supports the Petitioner's claim that it now staffs subordinate positions that were vacant at that time, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Evidence of hiring that occurred a year or more after filing does not provide proper cause to reopen the proceeding; the Petitioner does not dispute that it had three subordinate employees and three vacancies at the time of filing.

The Petitioner also provides an updated employee list with job duties, organizational chart, evidence of educational qualifications, and employee resumes, and submits evidence of its ongoing reliance on the services of a freight forwarder and an accountant. Although some of this information is presented as "updated," and some was previously submitted, and none of this newly submitted documentation contains new information regarding the employees who were on staff at the time of filing. We have already addressed why the evidence was insufficient to establish that the Beneficiary was supervising subordinate professionals, managers, or supervisors at that time.

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." Accordingly, the Petitioner has not shown proper cause for reopening.

III. CONCLUSION

The newly submitted evidence does not overcome the grounds for denial and establish eligibility for benefit. Therefore, the Petitioner has not shown proper cause to reopen the proceeding.

ORDER: The motion to reopen is denied.

Cite as *Matter of C- Inc*, ID# 1084045 (AAO Mar. 15, 2018)