U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15858187

Date: MAR. 19, 2021

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a floor cleaning and restoration service, seeks to temporarily employ the Beneficiary in the United States as a managing member 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 had approved a previous petition under the "new office" provisions at 8 C.F.R. § 214.2(l)(3)(v).[1] In the present petition, the Petitioner sought a second year under the new office provisions. The Director declined the Petitioner's request to treat the petition as a second new office petition, and instead considered the petition to be a request to extend the validity of the prior new office petition. The Director denied the extension petition, concluding that the record did not establish, as required, that the former new office could now support a managerial or executive capacity after its first year of operations.

The Petitioner appealed that decision, asserting that a petitioner can file a second new office petition on behalf of the same beneficiary. We dismissed that appeal, because the regulations provide for only one year of L-1 status in a new office. We also determined that the Petitioner no longer qualified as a new office when it filed the present petition in April 2017.

The Petitioner filed a motion to reconsider, contending that a second new office petition could be approved because the regulations do not expressly prohibit such an approval. We dismissed the motion, with a determination that the parameters of new office petitions are determined by what the regulations specifically allow, rather than by what those regulations fail to prohibit. The matter is now before us on a motion to reopen.

[1] 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will grant the motion in part and dismiss it in part. The underlying petition will remain denied.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The Petitioner previously filed a petition for a new office in January 2016. The Director approved that petition on April 14, 2016, granting the Beneficiary L-1A status until April 13, 2017. The Petitioner filed the present petition on April 11, 2017, and requested another one year period from April 11, 2017 to April 10, 2018 under the new office provisions. The Petitioner contended that it still qualified as a new business, partly because of significant changes to its business model and partly because the company did not begin doing business until July 2016.

The Director denied the petition, stating that the Petitioner did not submit "evidence of extraordinary circumstances which prevented the beneficiary from immediately performing his job duties and executing the business plan he presented in the new office filing." On appeal from that decision, the Petitioner stated that the "regulations do not specifically prohibit the filing of a second new [office] L-1A petition," and that the Petitioner therefore "should be able to file a second new office petition, and receive another full year of L-1A eligibility, without regard to the need to show extenuating circumstances." We dismissed the appeal, stating: "There is no provision for providing 'another full year of L-1A eligibility' under the terms of a new office petition, with or without extenuating circumstances."

The Petitioner then filed a motion to reconsider, asserting that the regulations do not specifically preclude a second full year as a new office. We dismissed the motion, stating:

> Immigration benefits can only be approved within the limitations established by the statute and regulations. The regulations do not need to specifically prohibit a second year as a new office; they do not expressly *permit* a second year. The new office provisions are regulatory, rather than statutory. Therefore, the absence of a regulatory provision for a second year as a new office rules out approval for a second year.

Now, on a motion to reopen, the Petitioner submits new evidence in an effort to show that "extraordinary extenuating circumstances outside of Petitioner's control . . . caused a delay of business operations," and therefore the petitioning entity "continued to qualify as a 'new office' as of April 11, 2017."

We will grant the motion in part, in order to consider this new evidence. Upon consideration, as explained below, the new evidence does not warrant approval of the petition.

The Petitioner states that the Beneficiary's spouse underwent medical treatment between March and July 2016, and that the Beneficiary "spent a lot of time to take care of her." The Petitioner submits copies of bills from health care providers, indicating that the Beneficiary's spouse received unspecified medical care on March 9, April 6, May 4, June 1, and July 14, 2016.

Most importantly, this new evidence does not address or overcome our key determination that "[t]here is no provision for providing 'another full year of L-1A eligibility' under the terms of a new office petition, with or without extenuating circumstances." Therefore, the new evidence does not, and cannot, establish eligibility for the benefit that the Petitioner seeks in this proceeding.

Furthermore, the new evidence establishes monthly visits to medical offices, but does not show how, or to what extent, those visits affected the Petitioner's ability to conduct business. Invoices in the record show that the Petitioner provided services shortly before or after several of the above dates in 2016, including "Carpet Cleaning" on May 5, "Stripping and waxing floor" on May 29, and a "Ceramic Tile Restoration" on July 12, 2016. The Petitioner does not specify who performed those services. If the Beneficiary personally cleaned and restored these floors, then he was performing core functions of the company rather than overseeing them in a managerial or executive capacity. If others (subordinates or contractors) provided those services, then the Petitioner has not explained why the Beneficiary's intermittent unavailability would have interfered with others' ability to perform the necessary tasks.

Furthermore, we note that this new reliance on medical bills stands in contrast to the prior claim that there was no "need to show extenuating circumstances." Also, the new evidence is entirely unrelated to the Petitioner's original explanation for the delay in starting business operations. In prior filings, the Petitioner did not mention medical issues. Instead, the Petitioner asserted that the business could not get underway until it had completed "purchasing equipment, securing offices, getting insurance and hiring employees." The Beneficiary himself asserted that the company's "initial business plan was to provide basic janitorial services to upscale homeowners," but, because of difficulty in attracting new customers, "in March 2017, we scrapped the janitorial business and pivoted to developing a natural stone floor cleaning/restoration business." The Beneficiary's statement made no mention of medical issues delaying the development of the business.

The motion also includes other, lesser revisions of the Petitioner's claims. For example, the record contains several invoices from March and April 2016, describing specific services performed for

identified clients, such as "[o]ffice carpet floor cleaning" for an import/export company in [redacted] Florida. Initially, the Petitioner described these documents as "[i]nvoices to customers." In its motion to reconsider, the Petitioner previously described these invoiced activities as "small sporadic cleaning jobs." Now, in its motion to reopen, the Petitioner contends for the first time that these activities "were no[t] services, but machine tests. . . . There were a few trial tests, both for equipment, and payment methods." This is not simply information that the Petitioner chose not to disclose on four prior occasions (the initial filing; the response to a request for evidence; the appeal; and the motion to reconsider). Rather, this new claim conflicts with prior descriptions of the same evidence. These unresolved discrepancies raise broader questions of credibility. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In our initial appellate decision, we stated:

> For a given beneficiary working for a given petitioner, the regulations provide for only one year of L-1A status in a new office. New office status is contingent on progress towards more fully establishing the business. If, at the end of that year, the new office has not made that progress, then this deficiency is grounds for ending the immigration benefit, not extending it.

The Petitioner's inconsistent explanations for the claimed delay in starting its business activity do not alter our prior conclusion.

The new evidence also includes a letter from an elected official in Ohio who engaged the services of the petitioning company for his "investment property" in Florida. The individual praises the quality of the service provided and states: "Far too many tax payer dollars are being wasted on pursuing hard working, law abiding immigrants living in America over mere technicalities." The present case is not a matter of U.S. Citizenship and Immigration Services "pursuing" the Petitioner or the Beneficiary "over mere technicalities." The Petitioner chose to initiate this proceeding by requesting a benefit on the Beneficiary's behalf, and the burden lies with the Petitioner to show that the Beneficiary meets the requirements for that benefit. The writer's opinions do not provide a substantive basis for approving the petition.

III. CONCLUSION

For the reasons discussed, the Petitioner has not overcome the grounds for dismissal of its appeal or it prior motion. The motion to reopen will be dismissed in part for the above stated reasons. The petitioner will remain denied.

ORDER: The motion to reopen is granted in part and dismissed in part.