U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S- LLC

DATE: MAR. 21, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a sports management, marketing and communications company, seeks to amend[1] and extend the Beneficiary's temporary employment as its chief executive officer (CEO) 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 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 appealed the Director's decision and we dismissed the appeal.

In its combined motion to reopen and reconsider, the Petitioner submits additional evidence and asserts that we overlooked evidence in the record demonstrating that the Beneficiary will primarily manage an essential function of the company, or, alternatively, that he will be employed in an executive capacity. The Petitioner maintains that any other conclusion indicates that we applied an inappropriately high standard.

Upon review, we will deny the combined motion.

I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 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.

[1] The Petitioner previously filed three L-1B classification petitions on behalf of the Beneficiary which authorized him to work in a specialized knowledge capacity as its soccer promotions coordinator for a total period of approximately 4 years and 10 months, from December 2010 until October 2015.

II. ANALYSIS

The primary issue in this matter is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity, as defined at section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, October 29, 2015) 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 assertions that we incorrectly applied the law and U.S. Citizenship and Immigration Services (USCIS) policy to the facts presented, 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 did not sufficiently define or support the Beneficiary's claimed managerial or executive duties in the record, and that the evidence did not establish that his duties as CEO would be significantly different from those he has been performing in the non-managerial position of "soccer promotions coordinator" since 2010. We also found that the Petitioner did not demonstrate that the Beneficiary would delegate most of the company's non-qualifying tasks to employees and contractors, as the company had, at most, one other employee and it provided insufficient evidence to establish that it regularly engaged independent contractors.

In reaching this determination, we noted that the Petitioner had stated on the Form I-129 that the Beneficiary's duties will be to "promote exchange of soccer activities between the United States and Brazil; introduce United States soccer players to Brazilian methods by meeting with Brazilian players and in the United States and arranging soccer tours to Brazil." We found that the Petitioner had not established that it had staff to arrange for coaches, referees, equipment, and facilities for its soccer camps and team visits.

Finally, although not a separate basis for dismissal of the appeal, we noted that even if the Petitioner had established that the Beneficiary were eligible for L-1A classification, the record did not demonstrate that he would be eligible for the requested two-year extension of stay pursuant to 8 C.F.R. § 214.2(l)(15)(ii)(which limits the stay for beneficiaries initially admitted in L-1B status to five years except in those cases in which the beneficiary receives a promotion to a managerial or executive position at least six months prior to reaching that five-year limit and obtains a new USCIS approval for L-1A status at the time the change occurred).

B. Motion to Reopen

On motion, the Petitioner submits nine exhibits labeled A through J. Although the Petitioner submits a brief in support of the motion, it has not specifically stated the new facts to be provided in the reopened proceeding nor has it explained the significance of the newly submitted evidence or how

this evidence overcomes our decision to dismiss its appeal. Almost all of the submitted evidence, which includes service contracts, a list of the Petitioner's current soccer club partners/affiliates, a lease agreement, a list of open invoices, a service contract, and flyers and invitations for events, post-dates the filing of the petition and cannot establish the Beneficiary's eligibility at the time of filing. This evidence shows that the petitioning company continues to do business, but is not directly relevant to the issues raised in our decision on appeal.

The Petitioner also submits copies of business cards for three independent contractors and states that these contractors (a president, a chief information officer and a public relations director), report directly to the Beneficiary. The Petitioner did not previously name these individuals in the record, nor did it previously claim to have employees or contractors working in these positions. Absent evidence establishing that these contractors were engaged at the time of filing, this evidence has no bearing on our determination that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity.

The newly submitted evidence does not overcome the grounds for dismissal and establish eligibility for the benefit. Therefore, 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 the statutory definition of "managerial capacity" and asserts that we did not properly consider the Petitioner's claim that the Beneficiary's job duties are more indicative of a function manager, rather than those of a personnel manager who primarily oversees subordinate employees.

In dismissing the appeal, we considered whether the Beneficiary could qualify as a function manager, and determined that the Petitioner had not clearly articulated the function the Beneficiary would be managing, as it generally indicated that he would be overseeing the entire organization and all of its activities. In addition, we determined that the Petitioner had not submitted sufficient evidence to show that his duties under the extended petition would be primarily managerial and explained our reasoning for this determination.

On motion, the Petitioner states that the following statement, previously submitted in response to the Director's request for evidence, while "not the most eloquently described," shows how the Beneficiary qualifies as a function manager:

> It is important for the adjudicating officer to understand that without [the Beneficiary's] ongoing guidance, the company will not have a way to continue operations, and will be forced to close its doors . . . [the Beneficiary] is the heart and soul of [the Petitioner] . . . [he] does not have any day-to-day responsibilities, but stead focuses on finding and exploiting opportunities for [the Petitioner's] growth . . . [The Petitioner's] growth to date would not have been possible without [the Beneficiary's] extremely effective marketing skills as well as the executive skills he has developed through his work at [the Petitioner]. The company's growth will only

> be accomplished through [the Beneficiary's] ability to . . . continue to seek additional opportunities for growth.

The Petitioner contends that this statement, considered in light of all the evidence submitted, identifies the Beneficiary's duties as "managing the essential function of, for lack of better terms, expanding and continuing to grow [the Petitioner's] . . . market by being the 'face,' 'icon,' 'activist,' 'campaigner,' or 'lobbyist' of and on behalf of [the company] in order to market soccer players, coaches and teams in the United States and Brazil." The Petitioner maintains that the company would not have developed to its current state, or even existed, without the Beneficiary's extensive professional connections in the U.S. and Brazilian soccer communities and his passion for the game of soccer.

We do not doubt that the Beneficiary is the "face" of the organization or that the petitioning company may owe its success, in large part, to his reputation as a [redacted] and his connections in the sport in both the United States and Brazil. However, these facts do not overcome our previous finding that the record as a whole does not show that the Beneficiary would be primarily managing an essential function of the organization or that he would primarily perform managerial duties. Notwithstanding this previously submitted statement, the record shows that the Beneficiary does in fact perform a number of "day-to-day responsibilities" that reasonably prevented us from concluding that his actual duties would be primarily managerial or executive in nature. The record showed that the Beneficiary himself was responsible for marketing the company's services and would more likely than not continue to perform many of the same non-managerial duties he performed as soccer promotions coordinator. The Petitioner does not directly address this finding on motion.

For similar reasons, the Petitioner states that the Beneficiary's position is also in an "executive capacity" as he directs "the major function of expanding the business to other markets by efficiently using his lobbyist and professional connections," and also establishes the company's goals and policies, exercises wide latitude in decision-making and receives little to no supervision. In dismissing the appeal, we addressed the Petitioner's claim that the Beneficiary would act as an executive, and noted that, while the Beneficiary appears to have the appropriate level of authority over company activities and decision-making, the record did not support a finding that he would be *primarily* performing executive-level duties. The Petitioner has not established how that determination was based on an incorrect application of the statute or policy, and has simply paraphrased the statutory definition of executive capacity in support of its claim on motion.

Finally, the Petitioner asserts that we erred by determining that the Beneficiary would be ineligible for a two-year extension of status if he were otherwise found eligible for L-1A classification. A beneficiary who initially enters the United States in L-1B status is normally limited to a five-year period of stay. 8 C.F.R. § 214.2(l)(15)(ii). If an L-1B beneficiary receives a promotion to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least 6 months to be eligible for a total period of stay of seven years normally granted to L-1A nonimmigrants. *Id.* In addition, the change to managerial or executive capacity must have

been approved by USCIS in an amended, new, or extended petition at the time that the change occurred. *Id.*

Here, the Beneficiary was initially granted L-1B status in December 2010, and his L-1B status was extended twice, most recently until October 31, 2015. The Petitioner filed this L-1A classification petition and request for a two-year extension on October 29, 2015, 4 years and 10 months after he was initially granted L-1B status. The Petitioner states that we incorrectly concluded that the Beneficiary's promotion had not already occurred and would not occur unless the instant petition was approved.

Upon further review, we find the Petitioner's statements regarding the timing of the promotion to be vague and therefore inconclusive. We may have misinterpreted the Beneficiary's promotion from "soccer promotions coordinator" to "CEO" as a proposed or future event; however, the record does not establish that he held the claimed managerial position for at least 6 months prior to the expiration of his L-1B status and identifies no specific date for the promotion.

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.

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 S-S- LLC*, ID# 244784 (AAO Mar. 21, 2017)