U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- INC.

DATE: MAR. 21, 2017

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 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. We dismissed the Petitioner's appeal of that denial on the basis that the evidence did not establish, as required, that the Beneficiary would be employed in a managerial capacity under the extended petition.

In its motion to reopen, the Petitioner submits additional evidence and asserts that the new evidence demonstrates that the company has hired subordinate staff and uses independent contractors to perform "all necessary functions in order to export and sell its products." Upon review, we will deny the motion.

I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 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

In dismissing the appeal, we considered the totality of the evidence, including the Petitioner's descriptions of the Beneficiary's job duties, 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 concluded that the record did not establish that the Beneficiary would primarily perform managerial duties, as the job descriptions were vague, suggested he would perform both qualifying and non-qualifying duties, and did not clearly establish how much time he would allocate to managerial functions. 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 insufficient evidence to support the Petitioner's claim that the Beneficiary relies on external contractors or on the services of employees who work for its Colombian parent company.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. Any new facts must establish eligibility at the time the underlying petition was filed. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

The Petitioner's motion includes a letter and 13 exhibits. Some of the submitted evidence, including employee job descriptions and the Petitioner's 2015 federal tax return, was submitted previously and therefore does not provide "new facts." The Petitioner also provides an additional supporting letter and a sample daily job description for the Beneficiary. While technically new, the content of these documents is substantially the same as that found in letters and job descriptions submitted previously.

Much of the remaining evidence, including an April 2016 organizational chart, evidence of employee salaries paid in 2015 and 2016, a 2016 financial statement, a lease and services agreement signed in 2016, and purchase and sales invoices from 2016, 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 has filled 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 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.

Finally, the Petitioner has submitted new evidence showing that it was using the services of a tax and accounting firm and a freight forwarder as of the date of filing. However, we cannot find that this evidence "shows that [the Petitioner] uses independent contractors to perform all its necessary functions in order to export and sell its products," as stated in the Petitioner's brief. While we noted in our prior decision that the Petitioner did not adequately support its claim that it uses independent contractors to perform certain functions, the Petitioner's newly-documented engagement of an accountant and a freight forwarder does not address or overcome the many other deficiencies in the record, as discussed at length in our prior decision and summarized above.

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# 263852 (AAO Mar. 21, 2017)