U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P- CORP.

DATE: MAR. 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a mortgage and lending services provider, seeks to temporarily employ the Beneficiary as a mortgage processor under the L-1B 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-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States in a specialized knowledge capacity.

The Director of the California Service Center denied the petition. We dismissed the Petitioner's subsequent appeal concluding that the Petitioner did not establish: (1) that it has a qualifying relationship with the Beneficiary's foreign employer; and (2) that the Beneficiary possesses specialized knowledge or that he has been employed abroad, and would be employed in the United States, in a position requiring specialized knowledge. In addition, while not addressed in the Director's original decision, we found that the Petitioner provided insufficient evidence to establish that it is a qualifying organization doing business in the United States.

In its combined motion to reopen and reconsider, the Petitioner submits both new and previously submitted documents and asserts that it has met its burden to establish eligibility for the requested classification.

Upon review, we will grant the motion to reopen in part. The record now contains sufficient evidence to establish by a preponderance of the evidence that the Petitioner is doing business and we will withdraw our adverse finding without further addressing that issue. However, the Petitioner has not overcome the two primary grounds for dismissal of the appeal. Accordingly, the motion to reopen will be denied in part and the motion to reconsider will be denied.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as 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 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.

II. ANALYSIS

A. Motion to Reopen

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. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."[1]

1. Qualifying Relationship

To establish a "qualifying relationship" under the Act and the regulations, the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

In our prior decision, we determined that the Petitioner submitted insufficient evidence with regard to its ownership and control and that there were unexplained discrepancies in the evidence provided. Specifically, we found that, despite claiming that it is a majority-owned subsidiary of the Beneficiary's foreign employer, the Petitioner did not provide supporting evidence of this claimed ownership and control, such as stock certificates, a stock ledger, agreements relating to the voting of its outstanding shares, profit distribution documents, or other relevant evidence. Further, the Petitioner provided copies of its recent federal tax returns which identified an individual, [redacted] as its sole owner. While we acknowledged that the Petitioner submitted a letter from its accountant to corroborate its claim that it is majority owned by the foreign entity, we found such evidence to be insufficient as the accountant did not explain what documentary evidence he reviewed to confirm the Petitioner's ownership.

On motion, the Petitioner submits additional evidence and addresses some of the issues raised in our decision. However, we note the Petitioner has not submitted any direct, relevant evidence of its

[1] We note that the Petitioner has resubmitted a number of documents that it previously submitted either prior to the denial or in support of the appeal. While we have reviewed and considered all of the evidence submitted in support of the instant motion, only those documents that were not previously submitted will be specifically addressed in this decision.

ownership such as stock certificates or a stock ledger, and has not claimed that this evidence is unavailable.

Although we specifically mentioned the lack of stock certificates and stock ledger in our prior decision, the Petitioner seeks to rely primarily on its amended tax returns as evidence of its ownership. It provides its year 2013 and year 2014 amended tax returns with date stamps indicating that they were received by the Internal Revenue Service (IRS). While the date stamps establish that the amended tax returns were actually filed with the IRS, the information contained within those filings has limited evidentiary weight, as the changes were submitted only after we notified the Petitioner of the various anomalies in the previously submitted evidence. The amended returns indicate that the foreign entity owns a 50.1% interest in the petitioning company, while [redacted] owns 49.9%. As noted, the tax returns submitted previously identified [redacted] as the Petitioner's sole owner.

The Petitioner also provides a copy of its 2015 federal tax return, which provides the same ownership information as the amended 2013 and 2014 tax returns and shows that the foreign entity is the majority shareholder. However, despite the May 2016 date filled in by the preparer, which indicates that it may have been filed prior to our decision, the tax return contains no signatures either from the preparer of the document or from an officer representing the Petitioner; nor is there separate evidence of an IRS receipt date, like the date stamps found on the amended tax returns, to confirm that this 2015 tax return was actually filed. The Petitioner's assurance on motion that the tax return was filed is not sufficient. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Further, we note that even if the tax returns consistently identified the foreign entity as the Petitioner's majority owner, the tax returns would not be given as much weight as stock certificates, a stock ledger, or documentation of meetings of shareholders.

In addition, the Petitioner's new evidence includes its State of Delaware Annual Franchise Tax Report for the 2015 tax year. However, the information contained in that form is inconsistent with the Petitioner's certificate of incorporation. Namely, while the latter indicates that the Petitioner was authorized to issue 25,000,000 shares of common stock with a par value of $.0001, the 2015 franchise tax report shows that only 1,000 shares of stock were authorized with a par value of $.01. The Petitioner has neither acknowledged this inconsistency nor provided independent, objective evidence to resolve it. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the Petitioner submits a "Business Continuity Plan," which the Petitioner appears to have submitted on motion in an effort to show that the foreign entity controls the U.S. entity. As this document does not demonstrate the foreign entity's claimed majority ownership of the Petitioner's shares, it is insufficient to overcome our previous decision.

In light of the above, the Petitioner has not provided sufficient evidence on motion to establish that it has a qualifying relationship with the foreign entity.

2. Specialized Knowledge

Next, we will address whether the evidence submitted on motion establishes that the Beneficiary possesses specialized knowledge and that he was employed abroad and would be employed in the United States in a position requiring specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In our decision we noted that the Petitioner initially suggested that the Beneficiary's specialized knowledge is based on knowing the English language, U.S. customs, and understanding the needs of American banking customers. The Petitioner later claimed the Beneficiary has proprietary knowledge of an "internal tool" and third party software only after the Director made adverse findings regarding the Beneficiary's claimed specialized knowledge. We found that the Petitioner neither explained nor documented its internal tools, systems, or methodologies, nor clarified what sets them apart from other loan processing businesses. In addition, we determined that the Petitioner did not sufficiently explain the training or experience required to master use of its product, services, systems, and methodologies or establish that the knowledge the Beneficiary gained through years spent working for other companies in the mortgage industry field amounts to specialized knowledge of the Petitioner's product, services, methodologies, procedures, and processes. We concluded that the Petitioner did not establish the Beneficiary's knowledge is distinct or uncommon compared to that possessed by similarly-employed professionals in the Petitioner's industry.

With regard to the claim that the Beneficiary's knowledge is advanced, we found that Petitioner had not detailed its or the foreign entity's processes and procedures or established that the junior processors who report to the Beneficiary will be trained on processes and procedures that are specific to either the foreign entity or the Petitioner. We noted the overall lack of comparative evidence of the salaries, education, duties, and tenure of other similarly employed workers or other evidence that would differentiate the Beneficiary's knowledge from the other employees within his department or with any other individuals within the foreign organization.

On motion, the Petitioner reiterates previously made claims, maintaining that the Beneficiary "has certain advanced or special skills in the training of new junior processors," and once again points to the Beneficiary's bachelor's degree in commerce and the claimed proprietary knowledge gained through years of working "in this particular field." The Petitioner also claims that the Beneficiary gained specialized knowledge as a result of a "hands-on approach and training" as well as by working in a managerial position for the foreign entity.

We find that the above claims are not new and were previously addressed in our decision. While the Petitioner acknowledges our findings, it does not provide evidence to overcome them. The Petitioner provides a letter from [redacted] its president, who stated that the Beneficiary's "primary job" is managing the "sales pipelines" of the Petitioner's clients and delegating responsibilities to "the most appropriate parties." [redacted] also reiterates previously made claims about the Beneficiary's "advanced familiarity with [underwriting] guidelines and overlays" that the

Beneficiary memorized through years of experience and the Beneficiary's "advanced knowledge" of "the overall mortgage application process."

As with other previously submitted evidence, [redacted] letter does not specify how the Beneficiary's knowledge of the mortgage application process is different from other mortgage processor managers or discuss any type of internal company training the Beneficiary had to undergo to attain his level of knowledge. The Petitioner has not established that the Beneficiary actually gained his knowledge through employment with the foreign organization. As we discussed in our earlier decision, the Beneficiary's ability to memorize third party and general industry information cannot be deemed as special knowledge of an employer's products and services and the application of those products and services in international markets. Any knowledge the Beneficiary may have gained through years he spent working for other companies in the mortgage industry is not specialized knowledge of the Petitioner's product, services, methodologies, procedures, and processes. The information in [redacted] letter is not new and does not overcome our earlier findings.

Although the Petitioner again references its internal tracking tool, www.privoloans.com, it does not address our prior reservations about the lack of evidence regarding the development, use, or training needed to use the tool or the lack of evidence establishing when this tool was developed to demonstrate that the Beneficiary was involved in the development process. The Petitioner also did not provide evidence to establish that the Beneficiary's knowledge is advanced or uncommon in comparison to his colleagues within the organization or that it is uncommon or noteworthy within the industry.

In sum, we find that the Petitioner's brief primarily consists of previously made claims about the Beneficiary's purported specialized knowledge. The Petitioner does not provide evidence to specifically address the deficiencies discussed in our decision.

Further, while the Petitioner claims that the Beneficiary's former and proposed positions qualify as positions that are in both a specialized knowledge and a managerial capacity, the record shows that the Petitioner originally claimed that the Beneficiary was and would be employed in a specialized knowledge capacity, rather than as an L-1A manager or executive. We reviewed whether the Petitioner met its burden of proof to establish eligibility for the requested L-1B classification annotated on the Form I-129. We have no authority to consider other nonimmigrant classifications in the alternative, and there is no regulation that allows the Petitioner to pursue both the L-1B and L-1A classifications through the filing of a single petition. Therefore, the Petitioner's request that we consider whether the Beneficiary qualifies for L-1A classification is denied.

III. CONCLUSION

As fully discussed above, the Petitioner has not overcome the two primary grounds for dismissal of the appeal. Although we withdrew our finding that the Petitioner is not doing business, we will not grant the motion to reopen or reconsider with respect to the issue of the Petitioner's qualifying

relationship with the foreign entity or the Beneficiary's employment in a specialized knowledge position because the evidence submitted on motion does not establish eligibility for the requested classification.

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

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of P- Corp.*, ID# 242919 (AAO Mar. 30, 2017)