U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C- INC.

DATE: MAY 4, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a clothing wholesaler, 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: (1) a qualifying relationship exists between the Petitioner and the Beneficiary's employer abroad; (2) the Beneficiary would be employed in the United States in a managerial or executive capacity under the extended petition; and (3) the Beneficiary was employed abroad in a managerial or executive capacity. The Petitioner appealed the Director's decision and we dismissed the appeal.

The matter is now before us again on a combined motion to reopen and reconsider. On motion, the Petitioner reiterates the Beneficiary's stated duties and asserts that it is submitting new evidence to demonstrate a qualifying relationship between it and the Beneficiary's foreign employer.

Upon review, we will deny both the motion to reopen and the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A. Motion to Reconsider

As noted, the Director denied the petition and we dismissed the appeal on three separate grounds. However, the Petitioner does not provide reasons for reconsideration or cite to pertinent precedent decisions to establish that our decision was based on an incorrect application of law or policy, as required. 8 C.F.R. § 103.5(a)(3). Accordingly, we find that the Petitioner does not meet the requirements of a motion to reconsider.

B. Motion to Reopen

In dismissing the appeal, we pointed to the Petitioner's IRS Form 1120 U.S. Corporation Income Tax Return, which indicated that it was not wholly owned by the foreign entity as asserted. In addition, we found that the Petitioner did not submit sufficient supporting documentation to substantiate its ownership, such as its articles of incorporation, its stock ledger, or other similar evidence of ownership. As we noted in our previous decision, regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

On motion, the Petitioner indicates that it has provided an updated IRS Form 1120, specifically Schedule G of this form, "to document and establish correct ownership of the company." Further, the Petitioner states that its supporting evidence on motion includes a "memorandum of understanding from [the foreign employer] showing its direct relationship between [it], and its US affiliate, [the Petitioner]." However, the record does not show that the Petitioner has submitted either of these documents on motion. Rather, the Petitioner submits the Beneficiary's 2015 IRS Form 1040 U.S. Individual Income Tax Return and a foreign employer-audited financial statement, neither of which support the Petitioner's ownership claim. The financial statement makes no reference to the Petitioner's ownership and is not probative towards establishing a qualifying relationship. In fact, schedule C of the Beneficiary's IRS Form 1040, Profit or Loss from Business (Sole Proprietorship), indicates that the Beneficiary owns the Petitioner as a sole proprietorship, which is inconsistent with the Petitioner's contention that it is wholly owned by the foreign employer. The Petitioner has not resolved this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, the Petitioner states that it has submitted new evidence relevant to overcoming our basis for dismissing the appeal based on a lack of qualifying relationship, namely an amended IRS Form 1120 and a memorandum of understanding. However, the Petitioner has provided no such new evidence. As such, the Petitioner has not submitted sufficient evidence to reopen the issue of its qualifying relationship with the foreign employer.

Further, in our prior decision, we found that the Petitioner submitted a vague job description that provided little detail about the Beneficiary's actual day-to-day tasks. We emphasized that the Petitioner did not substantiate the Beneficiary's claimed subordinates with payroll or state tax documentation and further determined that the Petitioner's 2014 IRS Form 1120 did not reflect salaries and wages paid to the his three claimed subordinates. Despite our conclusions, the Petitioner resubmits the same vaguely stated job duties and does not offer new facts to warrant reopening the issue of whether the Beneficiary would act in a managerial or executive capacity in the United States.

Lastly, we also dismissed the appeal noting that the Petitioner did not submit a comprehensive list of duties specific to the Beneficiary's former managerial or executive capacity abroad. The Petitioner does not address this ground for dismissal on motion, submit the Beneficiary's missing foreign duties, or provide other evidence relevant to his foreign employment.

In light of the above, the Petitioner has not provided new facts sufficient to satisfy the requirements of a motion to reopen.

II. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsidering the prior decision.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of S-C- Inc.*, ID# 1227649 (AAO May 4, 2018)