U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-T-L- INC.

DATE: MAY 13, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a wholesale and retail trading company, seeks to temporarily employ the Beneficiary as the president and director of its new office[1] 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had secured sufficient physical premises to house its proposed new office. Further, the Director determined that the Petitioner did not establish that the Beneficiary would act in a managerial or executive capacity within one year of an approval of the petition.

We dismissed the Petitioner's appeal from the Director's decision. The matter is now before us on a motion to reopen and a motion to reconsider.

On motion, the Petitioner answers 12 "objections" from the appellate decision. The Petitioner submits additional documentation and details, and asserts that circumstances have changed since the Petitioner filed the petition.

We will deny the motion to reconsider and the motion to reopen.

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*. We will discuss the requirements of each type of motion below. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen the proceeding to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

In our dismissal notice, we agreed with the Director's finding that the Petitioner did not meet certain requirements relating to the opening of a new office. Specifically, the Director found that the Petitioner had not shown that (1) it secured sufficient physical premises to house its proposed new office, or that (2) the Beneficiary would act in a managerial or executive capacity within one year of an approval of the petition. We also found that the Petitioner had not established the foreign entity's investment in the new office.

On motion, the Petitioner does not identify any incorrect application of law or policy. The Petitioner submits additional information, but additions to the record cannot show that our prior decision was incorrect based on the record of proceedings at the time of that decision.

Two assertions on motions appear to be allegations of error. We stated: "[t]he Petitioner . . . appears to indicate on appeal that the Beneficiary would oversee professional subordinates." The Petitioner states: "We have checked the appeal documents but there is no indication from our side that the beneficiary would oversee professional subordinates in the beginning." On page 8 of its appellate brief, the Petitioner stated: "We have submitted the resumes and the educational certificates of the beneficiary's sub ordinate [*sic*] which shows that they are professional." The Petitioner did not specify whether these subordinates were at the foreign entity or the petitioning U.S. entity. This ambiguity appears to have contributed to our finding discussed above. Even if the Petitioner was referring only to the foreign company's employees, and we erred by misinterpreting the Petitioner's ambiguous reference to professionals, this error did not determine or change the outcome of the appeal. Therefore, this assertion does not show proper cause for reconsideration of our prior decision.

The other apparent allegation of error concerns the financing of the new office. In a new office petition, the Petitioner must submit evidence to establish the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). We found that the Petitioner had not sufficiently established the size of the investment in the new office:

> The Petitioner did not clearly articulate the amount of required investment in the new venture or how investment would be allocated to successfully launch the business during the first year. On appeal, the Petitioner states that the Beneficiary's foreign

> employer invested $45,000 in the new venture and points to bank statements it asserts establishes this investment. We acknowledge that the Petitioner submitted bank statements from August 2017 indicating that over $42,000 was wired into its U.S. account; however, these same records indicate that this amount was spent down to approximately $31,000 by October 2017. Most importantly, the Petitioner does not describe how these amounts would be used during the first year to successfully launch the business as necessary to support the Beneficiary in a managerial capacity.

We also questioned the foreign entity's ability to support the new office, because the foreign entity reported no revenue, and a significant loss, in 2016. We concluded: "without further supporting documentation as to the foreign employer's finances, the submitted documentation does not appear to support a conclusion that the foreign employer would be capable of supporting investment in the Petitioner."

On motion, the Petitioner states that the foreign entity's financial "situation . . . changed drastically" after 2016. The Petitioner submits no new evidence but asserts that previously submitted bank statements from 2016 and 2017 "are proof of financial stability."

The Petitioner submitted copies of bank statements for the foreign entity. These statements indicate that the foreign entity had RM38,950.93 (less than US$10,000) in the bank as of the filing date on December 7, 2017.[2] Deposits into those accounts after that date cannot establish that the foreign entity or the Petitioner had access to the deposited funds at the time of filing. Therefore, the bank statements do not establish that we erred in our finding regarding the foreign entity's finances.

The Petitioner has not identified any error of law or policy, and has not shown that the decision was incorrect based on the record at the time of that decision. Because the Petitioner has not met the requirements of a motion to reconsider, the motion is denied. *See* 8 C.F.R. § 103.5(a)(4).

III. MOTION TO REOPEN

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). The Petitioner has submitted some evidence that is new to the record. For the reasons explained below, however, we find that this evidence does not warrant reopening of the proceeding or approval of the petition.

As noted above, the Petitioner's motion identifies no significant error in our appellate decision. Instead, the Petitioner devotes the bulk of the motion to supplementing the record in an attempt to address various deficiencies. When evaluating the new evidence and assertions, we are mindful that the Petitioner must establish that it met all eligibility requirements at the time of the filing, and continued to meet those requirements throughout adjudication of the petition. 8 C.F.R. § 103.2(b)(1). Therefore, any new evidence submitted on motion must establish that the Petitioner was already eligible when it filed the petition. Evidence and information relating to circumstances that arose after the filing date cannot retroactively establish eligibility.

[2] Source: https://www.xe.com/currencytables/?from=MYR&date=2017-12-07 (last visited May 1, 2019)

Every relevant, dated new document submitted on motion postdates the filing of the petition in December 2017, and most of them postdate the filing of the appeal in April 2018. Some also postdate the dismissal of the appeal in mid-October 2018. These documents, such as a commercial lease agreement, revised organizational chart, and dealer agreements, cannot show that the Petitioner and the Beneficiary met eligibility requirements at the time of filing in December 2017.

A. Sufficient Physical Premises

A new office petition must include evidence that the Petitioner has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A). The Petitioner has described two general areas of planned business activity: (1) sale and installation of [redacted] and (2) wholesale and retail sales of clothing, furniture, and artworks. The Petitioner must therefore establish that, at the time of filing, it had already secured sufficient physical premises to house these operations.

In the denial notice, the Director acknowledged that the Petitioner had leased warehouse and office space, but the Director found that the space was still under construction, and that the Petitioner had not established that "the office space is sufficient to house the four employees" that the Petitioner planned to employ during its first year of operations.

In our dismissal notice, we stated:

> On appeal, the Petitioner states that its warehouse space is sufficient to begin selling products and notes that office equipment is not required to demonstrate sufficient physical premises to commence doing business.
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> . . . . The space . . . appears to include a few tables for employees to use as work stations. However . . . , the Petitioner did not submit duty descriptions for the employees it projects it would hire during the first year. Therefore, without this evidence, we are not capable of determining whether the secured space is sufficient for the Petitioner's needs. For this reason, we concur with the Director's conclusion that the Petitioner did not demonstrate that it had secured sufficient physical premises to commence doing business during the first year.

On motion, the Petitioner submits a revised organizational chart showing nine positions:

- President
- Finance Director
- Account Clerk
- Director of Operations and Information Technology
- Installer
- Separator
- Grading and Storage
- Marketing and Sales
- Sales Executive

The job descriptions for these positions are on the Petitioner's printed letterhead, which identifies locations in [redacted] Arizona; [redacted] Arizona; and [redacted] California. The Petitioner had initially documented only the [redacted] location, for which it signed a lease in October 2017. The lease did not indicate the size of the leased property. Photographs of the site showed, and a subsequent letter confirmed, that the site was used for office space and storage of clothing, artwork, and furniture, but not for the storage, fabrication, assembly, or shipment of [redacted]

On motion, the Petitioner submits a copy of the November 2018 lease for its "new facility" in [redacted] The lease dates from after we dismissed the Petitioner's appeal, and therefore it does not show that the Petitioner had secured the location at the time of filing. Furthermore, the Petitioner did not establish that the property, a 1500-square-foot suite designated for "wholesale and retail" use, was sufficient to accommodate the [redacted] business.

The Petitioner's letterhead refers to a "Parts Factory" in [redacted] but the motion includes no further information about this site and no evidence that the Petitioner had secured the site prior to filing the petition in December 2017. The organizational chart showed an installer but no current or planned employees who would staff the "Parts Factory." The business plan submitted with the petition indicated that the Petitioner had "leased a 6000 sq ft facility in California and [was] in the process of leasing a similar facility in Arizona." This wording does not indicate that the Petitioner had already secured the [redacted]; it did not specify how far along the "process of leasing" was.

The new evidence submitted on appeal does not establish that the Petitioner had established sufficient physical premises on or before the petition's filing date. Therefore, the Petitioner has not shown proper cause to reopen the proceeding.

B. Managerial Capacity in the United States

A petitioner seeking to employ a beneficiary as a manager or executive of a new office must establish that the new office will support an executive or managerial position within one year of approval of the petition. 8 C.F.R. § 214.2(l)(3)(v)(C). The Director determined that the Petitioner did not meet this requirement. In our dismissal notice, we found the Beneficiary's job description to be vague and general. On motion, the Petitioner expands most of the items in that job description in an effort to show "the technicality and necessity of the Beneficiary['s] involvement to make the business successful[]."

The additional details answer some questions about how the various duties would relate to the Petitioner's business activity during the one-year new office period, but there remain questions about conflicts between different versions of the Beneficiary's job description. For instance, one job description indicated that the Beneficiary would spend 20% of his time on "[f]ormulating and implementing the flow of production, selection of production machinery[, and s]ourcing the suppliers of raw material." The Petitioner attempts, on motion, to clarify how these assertions relate to the Petitioner's business, but the new job description does not include this element.

Because the Petitioner has not shown proper cause to revisit other disqualifying grounds, however, further discuss or analysis of the new evidence and information would not affect the outcome of our decision on motion. Much of this evidence and information concerns developments after the petition's filing date, and therefore would more properly warrant consideration in the context of a newly filed petition with a filing date that would permit taking the evidence into account.

For the above reasons, we find that the Petitioner did not submit new evidence relevant to eligibility at the time of filing that would warrant reopening the proceeding.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of its appeal. The motion to reopen and motion to reconsider will be denied for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-T-L- Inc.*, ID# 3335188 (AAO May 13, 2019)