U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 4RR-E-I- CORP

DATE: MAY 17, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, which is described as a construction equipment exporter and real estate rental and management company, seeks to continue 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 record did not establish, as required, that the Petitioner will employ the Beneficiary in a managerial or executive capacity under the extended petition. We dismissed the Petitioner's appeal and denied its subsequent motion to reopen. The matter is now before us on a motion to reconsider.

On motion, the Petitioner asserts that we did not apply the preponderance of the evidence standard reviewing the motion to reopen, and reached a conclusion that was incorrect as a matter of law.

Upon review, we will deny the motion to reconsider.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, 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 reconsider must establish that we based our decision 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. A petitioner must support its motion to reconsider with a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. 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

On motion, the Petitioner asserts that, in denying the motion to reopen, we did not consider all of the evidence submitted, failed to apply the preponderance of the evidence standard, and reached a decision that was arbitrary based on the totality of the evidence. The Petitioner maintains that the evidence submitted in support of the motion to reopen was sufficient to establish that the Beneficiary would be employed in a managerial or executive capacity.

For the reasons discussed below, the Petitioner has not established that we incorrectly applied the law and USCIS policy to the facts presented or established eligibility for requested benefit. Accordingly, the Petitioner has not shown proper cause for reconsideration.

A. Previous AAO Decisions

In dismissing the appeal, we determined that the Petitioner had provided a deficient job description for the Beneficiary that included a combination of overly broad duties and duties that were not consistent with the definitions of managerial or executive capacity. We further found that the record lacked sufficient evidence to establish that the Beneficiary would oversee a staff of supervisory, professional, or managerial subordinates and that the Petitioner did not support its alternative claim that she would be employed as a function manager. In addition, we determined that despite claiming that it exports construction equipment, the Petitioner did not provide evidence to show that it engages in these business activities. We acknowledged documentation indicating that the Petitioner had acquired real estate assets, but found a lack of evidence to show that it had employees who would perform duties related to property rental or other real estate activities.

In denying the Petitioner's motion to reopen, we acknowledged the Petitioner's newly submitted evidence and explained why such evidence was insufficient to overcome our previous determination. We found that the Petitioner's brief and new evidence did not sufficiently clarify the nature of the Beneficiary's duties, the nature of the company's business activities, or the ability of the Petitioner's three subordinate workers to relieve the Beneficiary from significant involvement in the non-managerial, day-to-day operations of the company.

B. Motion to Reconsider

The Petitioner's primary claims on motion are that: (1) we erroneously determined that the Petitioner did not submit new evidence in support of the motion to reopen; and (2) we erroneously determined that there are inconsistencies in the record regarding the nature of the Petitioner's business. The Petitioner also contends that our decision to deny the motion to reopen was arbitrary and capricious and cites case law addressing the preponderance of the evidence standard.

The Petitioner's claim that we overlooked new evidence submitted in support of its motion to reopen is incorrect. We did note that some evidence accompanying the motion had been submitted previously and declined to address that evidence in our decision. However, we acknowledged and addressed all newly submitted facts and evidence, which included the Beneficiary's slightly revised

job description, an updated organizational chart with a new proposed subordinate position, a new statement from the Petitioner, the Petitioner's 2016 tax return, and a 2016-17 business plan. We explained why the new evidence was insufficient to overcome our decision to deny the appeal. The Petitioner has not addressed all of those findings in the current motion.

One of those findings was that the evidence submitted on motion did not fully clarify the nature of the Petitioner's business activities at the time of filing. The Petitioner asserts that the documentation provided in support of the prior motion established that the company is engaged in "the management and rental of fully furnished apartments and houses." However, the fact remains that the Petitioner stated on the petition that it exports construction equipment, and stated on its 2016 tax return that it is engaged in the wholesale of lumber and other construction materials. The record also contains photographs of the Petitioner's warehouse which suggested that the company may be selling and distributing goods other than construction equipment and materials. Finally, the Petitioner explained that it sought to diversify its activities in early 2016 when it purchased two real estate properties.

We find that the record remains ambiguous regarding the nature and scope of the Petitioner's activities. The Petitioner's tax return shows $476,593 in gross receipts or sales in 2016, but the Petitioner reported no rental income, no purchases, and no inventory. Because we cannot determine the Petitioner's source(s) of income or the nature of its activities, we cannot evaluate its reasonable needs in terms of staffing or the ability of the three subordinate employees to relieve the Beneficiary from significant involvement in the day-to-day operations of the business.

Even if the Petitioner is now claiming that real estate was the sole line of business at the time of filing, the record does not show how it was able to relieve the Beneficiary from performing non-qualifying duties. The Petitioner does not claim to have any employees who perform duties associated with real estate management or property rental activities.

As we addressed in our decision dismissing the appeal, the job descriptions submitted for the Beneficiary's subordinate employees were incongruous with the size of the business and its actual staffing levels. For example, the Petitioner stated that its customer service employee "prepares and conducts technical/product presentations and demonstrations" and "provides feedback to marketing and product engineering teams for future product enhancements." The Petitioner has not explained why it would require an employee to perform these duties and it does not have marketing or product engineering personnel. The operation manager's duties also refer to oversight of production and marketing personnel that do not exist within the company.

The Petitioner re-submitted the subordinates' job descriptions in support of the motion to reopen and did not attempt to clarify the full extent of the activities conducted by the company and the specific nature of the duties performed by the Beneficiary and her subordinates within the context of those activities. The Petitioner has not addressed these deficiencies in the current motion to reconsider. Instead, the Petitioner emphasizes that it submitted sufficient evidence to show that the company is engaged in real estate management and rental activities without discussing the lack of evidence to show that it has employees engaged in this line of business.

The Petitioner correctly asserts that, except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is "more likely than not" or probably true.

Our previous decisions discussed the deficiencies in the Beneficiary's job description, the deficiencies in the job descriptions provided for the subordinate employees, and the lack of evidence to support the Petitioner's claim that it is engaged in either construction equipment export and/or real estate activities. In applying the preponderance of the evidence standard, we explained why certain evidence was lacking in probative value, and noted the absence of documentation that would have assisted in corroborating the Petitioner's claims, such as documentation of business transactions demonstrating the source of its income. The Petitioner has not established that we applied an incorrect standard of review or that our decision was arbitrary and capricious based on the evidence presented.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not established that our prior decision misapplied law or policy or that it was incorrect at the time of that decision.. Therefore, the Petitioner has not shown proper cause for reconsideration.

ORDER: The motion to reconsider is denied.

Cite as *Matter of 4RR-E-I- Corp*, ID# 1274790 (AAO May 17, 2018)