U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-W-I-G- INC.

DATE: MAY 20, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an exporter of automobiles and automobile parts, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 California Service Center revoked approval of the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Petitioner filed a combined motion to reopen and reconsider in which it made specific references to new evidence and contended that the Director's decision was inconsistent with an AAO adopted decision. The Director concluded that the Petitioner did not meet the requirements of a motion to reopen or a motion to reconsider and therefore denied the motion.

On appeal, the Petitioner contends that the Director overlooked previously submitted new evidence, stating that such evidence may have been lost or misplaced. It also asserts that the notice of revocation was incorrectly issued because it was based on mistaken facts and raised issues that had not been previously discussed in the notice of intent to revoke.

Upon *de novo* review, we find that the Director incorrectly denied the motions to reopen and reconsider. Therefore, we will remand the matter for further proceedings consistent with our discussion below.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period August 4, 2016, until August 3, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

I. COMBINED MOTION TO REOPEN AND RECONSIDER

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). The issue before us is whether the Director's decision denying the Petitioner's combined motion was correct.[2]

With regard to the motion to reopen, although the Petitioner specifically referenced new evidence that it says was submitted with the motion, that evidence is not appended to the motion in the record, which has only a three-page supporting statement appended to it. However, the corresponding postal receipt for the motion shows that the total weight of the motion package was 2.12 lbs, thereby indicating that the Petitioner's motion package likely included evidence in addition to the three-page supporting statement. It is unclear why the evidence submitted at that time is not in the record; however, the Petitioner has since resubmitted such evidence on appeal and we have determined that such evidence included new business documents that had not been submitted prior to the issuance of the revocation notice.

With regard to the motion to reconsider, we find that the Director should have addressed the Petitioner's reference to *Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016), and the corresponding argument in which the Petitioner compared its own circumstances, involving "a comprehensive operational structure, with multi-business activities," to those in the cited decision.

In light of the above, we find that the Petitioner provided new evidence and articulated a basis for reopening. We also find that the Director should have addressed the Petitioner's reference to *Matter of Z-A-* in her decision on the motion to reconsider.

II. CONCLUSION

The Petitioner provided sufficient supporting evidence to demonstrate that the prior proceeding should have been reopened and the Petitioner's reference to *Matter of Z-A-* in support of the motion to reconsider should have been addressed. Therefore, we will remand the matter so that the Director can enter a new decision on the motions to reopen and reconsider.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of B-W-I-G- Inc.*, ID# 3431804 (AAO May 20, 2019)

[2] Although the Petitioner raises arguments questioning the propriety of the underlying decision to revoke approval of the petition, this appellate review is limited to the propriety of the Director's denial of the combined motion. As the Director's decision on the motion did not reach the merits of the revocation, the merits of the revocation are not before us at this time.