U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12236573

Date: NOV. 4, 2020

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as a wholesale distributor of Indian imports, seeks to temporarily employ the Beneficiary as the president 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: (1) the Petitioner had a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; and (3) the Beneficiary would be employed in the United States in a managerial or executive capacity within one year.[2] The Petitioner filed an appeal, which we dismissed on the same grounds. The matter is now before us on a motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

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).

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[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.

[2] On the Form I-129 petition, the Petitioner states that it intends to employ the Beneficiary as the president of its new office. Throughout the record, however, it indicates that it intends to employ the Beneficiary as its operations manager. No explanation for this discrepancy was provided.

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).[3]

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen the denial of the petition. Instead, the filing is a motion to reopen our most recent decision.

II. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

III. ANALYSIS

The Director denied the new office petition for three reasons. Specifically, the Director determined that the Petitioner had not shown that: (1) it had a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; and (3) the Beneficiary would be employed in the United States in a managerial or executive capacity within one year. In our appellate decision, we agreed with each of those reasons. The primary issue to be addressed in this decision is whether the Petitioner has submitted new facts that overcome our appellate decision.

On motion, the Petitioner does not directly address the requirements of a motion to reopen or identify any new facts that it seeks to introduce into the record.[4] The Petitioner submits 11 labeled exhibits, nearly all of which the Petitioner had submitted previously. Re-submitted materials do not introduce *new facts* into the record, and therefore they do not provide a basis for reopening the proceeding. Out of the 11 exhibits submitted on motion, only three do not appear to have been submitted previously.

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[3] The Petitioner's supporting document is entitled "Motion to Reopen and Reconsider." The title of the brief notwithstanding, the nature of the submission is determined by the election at Part 2 of the Form I-290B. As noted above, the Petitioner elected to file a motion to reopen (by checking Box 1.d. of the form), rather than a joint motion to reopen and to reconsider, which would be signified by checking Box 1.f.

[4] Rather, the Petitioner requests reconsideration under 8 C.F.R. § 103.5(a)(3). As noted previously, the Petitioner elected to file a motion to reopen, not a motion to reconsider.

The Petitioner submits a copy of an untitled document it refers to as its "Policy and Procedures Manual," which appears to be its employee handbook. We reviewed this document, which provides a basic overview of the company's leave and discipline policies, employee benefits, and other general procedures. Although the Petitioner's accompanying statement identifies this as a "supporting document," it does not explain its relevance to the motion. The Petitioner has not addressed the significance of this new evidence or submitted any additional explanation or evidence regarding the manner in which its policies and procedures manual would warrant reopening.

The Petitioner also submits two audited financial statement for the foreign entity for 2016-2017 and 2017-2018. On the exhibit list accompanying its motion, the Petitioner states that these documents serve "as evidence of their financial ability to invest in the U.S. entity and remunerate the beneficiary as well as evidence of their qualifying relationship."

In our appellate decision, we determined that the Petitioner did not demonstrate that the Beneficiary would be employed in the United States in a managerial or executive capacity within one year. Specifically, we noted that the Petitioner had only documented an investment of $14,000 in the new venture despite stating in its business plan that its U.S. office required $200,000 in start-up funding. On motion, the Petitioner relies on the audited financial statements as evidence that the foreign entity has funds available to invest in the new venture, but states that "it would be an irrational expectation for any business to invest $200,000 into a business that we can not operate without the approval of the beneficiary's visa." The issue here, however, is not whether the foreign entity has sufficient funds to invest in the new venture, but whether the new office has been sufficiently funded such that it may commence operations and support the Beneficiary in a primarily managerial or executive capacity at the end of its first year of operations.[5] The ability of the foreign entity to invest in the new venture and remunerate the Beneficiary is not in question here, as the Petitioner previously documented the financial standing of the foreign entity through tax returns and other documentation. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute new facts.

The Petitioner also relies on the audited financial statements as evidence of a qualifying relationship with the Beneficiary's foreign employer. In our appellate decision, we determined that the Petitioner did not establish the requisite qualifying relationship because the record contained insufficient supporting documentation to establish the ownership of the U.S. entity, a limited liability company (LLC). Specifically, we noted that the Petitioner did not provide membership certificates, minutes of member meetings reflecting the issuance of membership interests or contributions made, or other similar supporting documentation to clearly demonstrate the ownership of the U.S. entity.[6] Although

[5] When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position.

[6] LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of

the Petitioner asserts that the audited financial statements submitted on motion establish the requisite qualifying relationship, these documents merely provide an overview of the foreign entity's financial status and bear no relevance to the question of ownership of the U.S. entity. The Petitioner has not shown cause for reopening these proceedings by establishing that the information in the audited financial reports would have changed the outcome of our appellate decision.

IV. CONCLUSION

For the foregoing reasons, although the Petitioner has submitted new evidence on motion, it has not submitted sufficient new facts supported by affidavits or other documentary evidence to warrant the reopening of this matter. 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen will be dismissed.

ORDER: The motion to reopen is dismissed.

control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986).