U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-G-, LLC

DATE: NOV. 24, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an oil and gas company,[1] seeks to temporarily employ the Beneficiary as the chief executive officer of its new office[2] under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality 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. The Petitioner appealed the denial which we dismissed finding that the Petitioner did not meet the physical premises requirement for a new office, as required, under the regulation at 8 C.F.R. § 214.2(l)(3)(v)(5). We also determined that the Petitioner had not established that the Beneficiary will be employed in a managerial or executive capacity for the U.S. entity within one year of approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The matter is before us on a combined motion to reopen and motion to reconsider. In its combined motion, the Petitioner submits additional evidence and asserts that the record established that it had sufficient physical premises when the petition was filed and that the Beneficiary was eligible for a visa when the petition was filed.[3] Upon review, we will deny the motions.

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[1] The Petitioner's business plan indicates that it intends to rent oil drilling equipment to other U.S. companies, and export oil and gas equipment, as well as shoes, clothes, food items, and automobiles and related parts and accessories to Nigeria.

[2] 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.

[3] The Texas government website indicates that the Petitioner no longer has the right to transact business in the State of Texas. *See* https://mycpa.cpa.state.tx.us (last visited Nov. 8, 2017). In any future filings, the Petitioner must provide evidence establishing that it is active and operating in Texas.

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 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).

II. ANALYSIS

A. Motion to Reopen

1. Sufficient Physical Premises

The Petitioner initially submitted an unsigned 12-month sublease agreement for general office space to commence on January 1, 2016. In response to the Director's request for evidence, the Petitioner submitted a different lease, signed in June 2016 to commence in August 2016. In our decision, we determined that the second sublease did not establish that the Petitioner had sufficient physical premises to house its new office when the petition was filed in December 2015, and thus was not pertinent to the new office petition. In our review of the initial 12-month we found that: (1) the lease had not been signed; (2) there was no evidence that the master lessor had agreed to the sublease terms; (3) the record did not include evidence that the Petitioner had paid the required deposit; and (4) the Petitioner had not explained why the initial lease did not include warehouse space which, based on the nature of the Petitioner's business will be needed to commence operations.

On motion, the Petitioner submits a copy of the initial lease which now includes the sublessor and the Petitioner's signatures. The Petitioner asserts that despite the previous attorney's failure to submit the signed lease, it had secured an initial office location prior to filing sufficient to house and start the business. The Petitioner notes that the Beneficiary was expected to finalize the location and secure additional spaces for the warehouse locations once his visa petition was approved and that there was no need for the Petitioner to expand the office to include a warehouse without the L-1A approval.[4]

The Petitioner's submission of the initial sublease which now includes signatures is noted, as is the Petitioner's explanation of its plans to add warehouse space once the Beneficiary's L-1A visa

[4] The Petitioner refers to the second June 2016 lease and an additional third lease submitted on appeal as evidence of the Petitioner's warehouse and office capacity. However, these leases were not in effect until after the petition was filed.

petition was approved. However, the Petitioner did not provide evidence that the master lessor agreed to the terms of the sublease and evidence that it had paid the required deposit. Accordingly, the Petitioner has not resolved the deficiencies of the initial lease. Moreover, even though the enterprise is in a preliminary stage of organizational development, the Petitioner is not relieved from meeting the statutory requirements. The Petitioner bears the burden of establishing, at the time of filing, that it has acquired sufficient physical premises to commence business. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). As we previously found, the nature of the Petitioner's business, as set out in its business plan and as demonstrated by the type of space the Petitioner ultimately secured to commence business, the Petitioner's initial business required warehouse space. The Petitioner did not provide evidence that it had secured sufficient space that could accommodate its growth during the first year of operations, when the petition was filed. The record on motion does not include new facts that resolve the deficiencies of the initial lease submitted or that are pertinent to the sufficiency of the Petitioner's initial required physical premises when the petition was filed. The Petitioner has not submitted new facts sufficient to satisfy the requirements to reopen this matter on this issue.

2. U.S. Employment in a Managerial or Executive Capacity

To establish that a petitioner will support a beneficiary in a managerial or executive capacity within one year of approval of the petition, the petitioner must submit information regarding 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).

The Petitioner in the business plan submitted indicated that it "will focus on exporting oil and gas equipment, shoes, clothes, and various food items, as well as automobiles and accessories outside the United States." In addition, the Petitioner "will also specialize in oil and gas production" and "will rent drilling equipment to oil and gas drilling companies in the US." In our decision, we determined that the record did not include sufficient evidence to establish that the funding from the foreign entity is adequate to meet the company's initial equipment purchasing and other start-up costs.[5] We also determined that the Petitioner had not established how the Petitioner's employees would sufficiently relieve the Beneficiary from performing administrative and operational duties, specifically in the purchasing, logistics, and distribution area for its several lines of business. We also reviewed the Petitioner's description of the Beneficiary's intended duties and found that the duties were stated in general terms and provided little insight into the expected nature of her day-to-day duties.

On motion, the Petitioner re-submits its December 2015 business plan and asserts that the initial planned investment amount is the initial funding start-up cost needed based on the initial business

[5] The Petitioner's business plan did not account for initial funding needed to begin purchasing and exporting automobiles and other goods. Further, although it appeared that the Petitioner had secured additional funding to purchase equipment, it did not explain the amount and type of equipment to be purchased, and the anticipated costs of that equipment. Thus, the record was not sufficiently detailed so that we could analyze and ascertain the probability of the Petitioner's ability to support the Beneficiary in a managerial or executive capacity.

plan. The Petitioner acknowledges that some of the Beneficiary's duties may have been described as administrative in nature, but asserts that the Beneficiary will only provide directions and advice to subordinates who will be hired upon the Beneficiary's entry into the United States. The Petitioner contends, for the first time on motion, that administrative employees at the foreign entity will be under the Beneficiary's supervision and will provide strong administrative support to her. The Petitioner does not support these assertions with any new facts.

We reviewed the Petitioner's business plan and detailed the deficiencies in the record regarding the realistic expectation that the Petitioner will succeed and rapidly expand as it moves away from the development stage to full operations where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The Petitioner does not offer explanations on motion that address the deficiencies noted in our prior decision. The Petitioner's primary resolution to the deficiencies is that the Beneficiary once approved for an L-1A visa will review and assess the funding needed to continue the start-up of the Petitioner's initial operations and will hire the employees designated in the business plan. As detailed in our decision, the information in the record is insufficient to establish that the Petitioner's sales forecasts are based on credible evidence as the Petitioner's business plan does not account for the initial funding necessary for its various business lines. The record also lacks sufficient evidence that the Beneficiary will be relieved from primarily performing non-qualifying duties within one year. The Petitioner's claim on appeal that the foreign entity's administrative employees will support the Beneficiary has not been corroborated with information in the record.

The record on motion does not include new facts that establish that the Petitioner will be able to support a managerial or executive position within one year of approval of the petition. The Petitioner has not submitted new facts sufficient to satisfy the requirements to reopen this matter on this issue.

B. Motion to Reconsider

1. Sufficient Physical Premises

The Petitioner does not offer any legal argument that our decision on the issue of sufficient physical premises was incorrect. Rather, the Petitioner claims that there is no need to expand the Petitioner's initial space until the Beneficiary's L-1A visa petition is approved. However, as noted above, the Petitioner bears the burden of establishing, at the time of filing, that it has acquired sufficient physical premises to commence business. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). Based on its business plan, the Petitioner had not acquired sufficient physical premises to accommodate its claimed staffing and to commence its export and equipment purchasing lines of business when the petition was filed. The record on motion to reconsider is insufficient to warrant reconsideration of our decision on this issue.

2. U.S. Employment in a Managerial or Executive Capacity

Similarly, the Petitioner does not offer any legal argument that our decision on the issue of the Petitioner's ability to realistically support the Beneficiary in an executive or managerial position within one year is incorrect. Instead, the Petitioner disagrees with our decision and asserts that the evidence before the Director was sufficient to establish eligibility on this issue. The Petitioner, however, does not offer any pertinent precedent decisions to support its alternate conclusion. The record on motion to reconsider is insufficient to warrant reconsideration of our decision on this issue.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration or established eligibility for the immigrant benefit sought.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of N-G-, LLC*, ID# 799847 (AAO Nov. 24, 2017)