U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-B- LLC

DATE: NOV. 30, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, which seeks to open a musical instrument store, seeks to temporarily employ the Beneficiary as 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the new office would be able to employ the Beneficiary in the United States in a managerial or executive capacity within one year; and (2) the Beneficiary has been employed abroad in a managerial or executive capacity.

We summarily dismissed the Beneficiary's appeal from the Director's decision. The matter is now before us on a motion to reconsider. On motion, the Petitioner asserts that we erred by disregarding a timely supplement to the appeal.

We will deny the motion.

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). A motion to reconsider must be supported by 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. We must deny a motion that does not meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

The regulations require summary dismissal of an appeal when the appellant does not identify specifically any erroneous conclusion of law or statement of fact for the appeal. *See* 8 C.F.R.

[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.

§ 103.3(a)(1)(v). The party filing the appeal may, however, request additional time to submit a brief. *See* 8 C.F.R. § 103.3(a)(2)(vii). In such a case, the regulations require the Petitioner to submit the brief directly to the Administrative Appeals Office (AAO). *See* 8 C.F.R. § 103.3(a)(2)(viii).

The Director denied the petition on December 19, 2017. The Petitioner filed its appeal on January 22, 2018. The appeal included a very brief notation, asserting that the Petitioner had adequately addressed the issues raised in a request for evidence (RFE): "We believe that the evidence submitted in our RFE was either not reviewed, or misplaced. We provided all documentatio[n] requested in the RFE." This assertion is not sufficient for a substantive appeal, but the Petitioner also checked a box on Form I-290B, Notice of Appeal or Motion: "My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal."

We summarily dismissed the appeal on June 15, 2018, stating: "we have not received anything further from the Petitioner." On motion, the Petitioner disputes this finding, and submits a supplementary statement, along with evidence of timely mailing on February 19, 2018.

The Petitioner has established that it submitted a supplement to the appeal, but not that we erred by summarily dismissing the appeal.

As cited above, 8 C.F.R. § 103.3(a)(2)(viii) requires submission of appellate briefs directly to the AAO. The instructions to Form I-290B stated, on page 6: "Any brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly to the AAO." The instructions then provided directions on where to find the AAO's current mailing address. Every document submitted to the Department of Homeland Security (which includes the AAO) must be submitted in accordance with the form instructions. *See* 8 C.F.R. § 103.2(a)(1).

In this instance, the Petitioner did not file the supplement in accordance with the form instructions. Instead of submitting the supplement directly to the AAO, as instructed, the Petitioner sent the material to a USCIS processing facility in Phoenix, Arizona. Tracking stamps show that the statement arrived at the National Benefits Center on February 28th, and at the Vermont Service Center on March 21st. While the original letter has since made its way into the file pertaining to this petition, the Petitioner sent the appeal statement to the wrong address which delayed its incorporation into the record. Therefore, there was no error in summarily dismissing the appeal.

Even if we were to grant this motion, we note that the Petitioner's statement would not have resulted in approval of the petition. Below, we will address the substantive assertions in the Petitioner's appellate statement.

The Petitioner states that the denial was in error because the Petitioner had established that it rented adequate office space, and that the foreign parent company had employed the Beneficiary for at least a year. The Director, however, made no finding to the contrary. The denial rested on other factors.

The Petitioner states that the Director erred "by assuming . . . that the company had already been in business for . . . 1 year, and not applying the correct standard that this was a new office setup." Review of the decision shows that the Director quoted the pertinent regulations for a new office petition, and consistently referred to the new office standards in the decision.

The Petitioner contends:

> [T]he new office set up standard normally permits wide authority to the L1A Executive to operate during the new 1 year period . . . . The Beneficiary was never granted the opportunity to develop the company under the 1 year start up period, but held to have to prove the number of staff and responsibilities of each staff member prior to even hiring the staff. Petitioner submitted a detailed business plan, but the reviewing officer did not accept the findings in the business plan, but held the Petitioner to having to make and implement plans without the opportunity to experience the needs and possibl[y] revise the plans based upon the 1 year start up experience that is normally afforded all new L1A's under these provisions.

An L-1A new office petition must include evidence to show that the intended United States operation will support an executive or managerial position within one year of the approval of the petition. This evidence must establish the proposed nature of the office, describing the scope of the entity, its organizational structure, and its financial goals. 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*).

The new office regulations do not require the company to be fully operational at the time of filing, but the Petitioner should know what the company will be doing, and how it will be staffed, at the time of filing. The Petitioner must meet eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). A new office petition is not simply a placeholder that grants a year of immigration benefits while a petitioner decides how to structure, operate, and staff the business; the regulations presume that the petitioner has already made those decisions.

The Director denied the petition based, in part, on a finding that the Petitioner had provided inconsistent information about the company's proposed organizational structure and financial outlook. Comparing the business plans in the initial filing and the RFE response, the Director identified three significant discrepancies in the first-year projections:

	Initial Filing	RFE
Employees	8	7
Payroll	$144,150	$60,720
Cash Sales	$514,778	$192,000
Operating Expenses	$252,770	$83,720

The Petitioner has not explained these significant inconsistencies. It is understood that a new office will grow and develop, but the petition must rest on a foundation of reliable and consistent

information. A petitioner cannot simply cite arbitrary figures and then change that information without limit or explanation.

The Petitioner protests the requirement to establish "the number of staff and responsibilities of each staff member prior to even hiring the staff," but the Petitioner does not explain why it is unreasonable or unusual for a company to set a personnel budget (which requires an expectation of staff size) and make hiring decisions based on filling specified positions that perform defined roles.

Furthermore, the appeal statement does not address a stated ground for denial. The Director found that the Petitioner had not provided enough information and evidence to show that the Beneficiary had worked in a managerial or executive capacity with the foreign parent company. This finding, by itself, warranted denial of the petition, and the Petitioner has not contested it on appeal.

For the above reasons, the Petitioner would not have prevailed on motion.

The Petitioner did not follow the required procedures to supplement its appeal, and the supplemental submission would not have overcome the denial of the petition, even if properly submitted.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-B- LLC*, ID# 1887086 (AAO Nov. 30, 2018)