U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-R-O-C- LLC

DATE: OCT. 28, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, describing itself as an operator of a restaurant and bar, seeks to temporarily employ the Beneficiary as "Chief Executive Officer/Manager" of its new office[1] 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 California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; (2) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (3) the Beneficiary's prior education, training and employment qualifies him to perform the intended services in the United States. The Petitioner then filed an appeal, which we dismissed, affirming the first two grounds and reserving the remaining ground.

The matter is now before us on a motion to reconsider in support of which the Petitioner submits a legal brief contending that our decision is "contrary to law and the manifest weight or greater weight of the evidence."

Upon review, we will deny the Petitioner's motion.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

[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.

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).

II. MOTION TO RECONSIDER

A. Motion Requirements

A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

B. Summary of Findings on Appeal

The primary issue to be addressed in this decision is whether the Petitioner has put forth arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy with respect to the facts of this case. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, June 2018) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Here, the subject of the prior decision was our dismissal of the Petitioner's appeal. As such, the purpose of this decision is to consider legal arguments that pertain to our prior decision dismissing the appeal.

In our appeal decision, we first addressed the Beneficiary's foreign employment. We noted that the Petitioner used two different job titles when referring to the foreign position and found that neither the job title of "Building and Sales Manager" nor "Purchase and Sales Manager" was reflected in the responsibilities and activities used in the Beneficiary's job descriptions, which were likely derived from a template that included repeated use of the phrase "INSERT Group." We observed that this template was likely used in the Beneficiary's U.S. job description, which was similar in content and contained the same generic phrase "INSERT Group." We also pointed to inconsistencies among the Beneficiary's various job descriptions and the multiple discrepancies regarding the foreign entity's staffing composition.

Further, we found that despite providing several job descriptions in its response to the Director's request for evidence (RFE), the Petitioner did not address a critical evidentiary deficiency noted in the RFE regarding the lack of a detailed account of the Beneficiary's foreign job duties. Although we acknowledged that one of the job descriptions included a broad overview of the foreign entity's staffing, we found that none of the RFE submissions resolved the noted inconsistencies that we

delineated in detail in our prior decision with regard to the Beneficiary's job title, level of authority, areas of responsibility, and job duties with the foreign parent entity.

Likewise, we found that the RFE response did not provide insight into the Beneficiary's daily job duties with the U.S. entity and thus it did not adequately address the Director's request for a more detailed job description. More specifically, we found that the Petitioner provided vague and conflicting lists of the Beneficiary's U.S. job duties, offered inconsistent information about its staffing arrangement, and neglected to include personnel or hiring projections in its business plan, which lacked employee wage and salary information and thus precluded us from being able to gauge the Petitioner's operating expenses. We observed that the Petitioner has claimed that it would employee between 13 and 36 employees and while additional information was submitted on appeal, we found that the Petitioner did not provide a consistent and detailed description of its anticipated staffing structure at the end of its first year of operation. In sum, we concluded that the Beneficiary would likely assume the role of a restaurant manager who would primarily perform the restaurant's operational tasks rather than primarily executive job duties within one year of the petition's approval.

C. Analysis

In our prior decision, we summarized the Petitioner's response to the RFE and explained why we found that the submitted evidence of the Beneficiary's foreign and U.S. job duties and the foreign and U.S. entities' respective organizational structures was insufficient and did not establish that the Beneficiary was employed abroad and would, within one year of this petition's approval, be employed in the United States in an executive capacity. We described multiple inconsistencies and explained how the prior submissions were insufficient to allow the Petitioner to meet its burden of proof.

On motion, the Petitioner resubmits a brief whose content is nearly identical to the one previously offered in support of the appeal and adds that we repeated "the wrongful findings" of the original denial, "wrongfully dismisse[d] all of the favorable evidence," and relied on "some misguided observationbs [*sic*]." The Petitioner also contends that it provided "more than sufficient evidence" of its qualifying relationship with the Beneficiary's foreign employer and "presented sufficient evidence" regarding the Beneficiary's foreign and proposed employment.

As a threshold matter, we note that for purposes of assessing the merits of this motion, the subject matter to be considered is limited to only those legal conclusions that were made in the decision that immediately preceded the motion – in this case, our decision dismissing the appeal. Because the qualifying relationship issue was not in contention either in the Director's decision or in our decision dismissing the appeal, it is not relevant in this instance and need not be addressed beyond this point.

Further, despite generally claiming that "sufficient evidence" was provided regarding the Beneficiary's foreign and proposed employment, the Petitioner has offered no evidence to support the argument that our decision was "contrary to the law" and that it was inconsistent with "the greater weight of the evidence." Aside from making these broad claims, the Petitioner does not specify how our decision was legally unsound or factually incorrect and it does not acknowledge or offer evidence to resolve the multiple inconsistencies we noted in our prior decision regarding key elements of its foreign employment claim, including the Beneficiary's job title, job duties, and staffing of the foreign

entity. Likewise, the Petitioner disregards the multiple inconsistencies we laid out as grounds for our conclusion and neglects to specify legal errors to support its argument that our findings were "misguided." The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Although the Petitioner refers to an unpublished decision in which we determined that a beneficiary met the requirements of serving in a managerial or executive capacity for L-1 classification, it has not established that the facts of this petition are analogous to those in the unpublished decision. Further, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on USCIS, unpublished decisions are not similarly binding.

We acknowledge that the Petitioner disagrees with our decision dismissing the appeal; however, it has not provided evidence establishing that our findings were based on an incorrect application of law or USCIS 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). Therefore, the Petitioner has not shown cause for reconsideration.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Because the Petitioner has not shown proper cause for reconsideration, it has not met that burden.

ORDER: The motion to reconsider is denied.

Cite as *Matter of T-R-O-C- LLC*, ID# 6407185 (AAO Oct. 28, 2019)