U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-W-C-, INC.

DATE: SEPT. 12, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a distribution center for watches and other merchandise, seeks to temporarily employ the Beneficiary as the logistics 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 an executive or managerial capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial capacity and that she would be employed in the United States in a managerial or executive capacity within one year of approval of the new office petition. We dismissed the Petitioner's subsequent appeal and affirmed both grounds for denial. We also added new findings in which we pointed to inconsistencies that led us to further question the Petitioner's eligibility regarding the following: (1) the credibility of the Petitioner's claim regarding the Beneficiary's place of employment abroad; (2) whether the Beneficiary was employed abroad continuously for one year during the relevant three-year time period; (3) whether the evidence submitted with regard to the existence of the foreign entity was credible; and (4) whether the Petitioner submitted valid stock certificates to establish its ownership.

The matter is now before us on a motion to reopen in support of which the Petitioner attempts to resolve previously noted inconsistencies and restates the prior claim that the Beneficiary was employed abroad as both an executive and as a function manager. The Petitioner also raises a new claim, asserting that the Beneficiary's position abroad involved specialized knowledge.

Upon review, we will deny the motion to reopen.

[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.

I. REQUIREMENTS FOR A MOTION TO REOPEN

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.[2]

II. ANALYSIS

The primary issues in this matter are whether the Petitioner has submitted new facts, supported by credible evidence, to overcome the adverse findings in our prior decision regarding the Beneficiary's employment abroad, her proposed U.S. employment, and the various credibility issues that pertain to the Beneficiary's employment abroad and the Petitioner's ownership. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, December 2016) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For the reasons discussed below, we will deny the motion to reopen. While the current motion includes newly submitted evidence in the form of a legal brief, the new facts that the Petitioner raised in the brief were not supported by corroborating evidence. Accordingly, the Petitioner has not shown proper cause for reopening.

A. Previous AAO Decision

In dismissing the Petitioner's appeal, we determined that the Petitioner did not provide credible evidence to establish that the Beneficiary was employed abroad by the foreign entity – [redacted] – for the required one year during the relevant three-year time period that preceded the filing of this petition. First, we addressed the Beneficiary's job duties and the foreign entity's staffing, finding that the evidence submitted was not sufficient to establish that the Beneficiary was employed as either an executive or a function manager. We noted that on appeal, the Petitioner did not address, rebut, or contest the Director's finding that the Beneficiary's subordinates were truly supervisory, despite their managerial job titles.

Next, we addressed the issue of the Beneficiary's proposed employment, finding that the Petitioner did not provide sufficient evidence upon which we could base the conclusion that it would realistically support the Beneficiary in a managerial or executive capacity within one year of the petition's approval. In making this finding, we considered the Petitioner's projected organizational chart, which we found to be inconsistent with statements that the Petitioner repeatedly made in its business plan. We also questioned the validity of the Petitioner's bank statements, which reflect

[2] To the extent that the Petitioner makes repeated references to previously submitted evidence, such as an organizational chart and "a brief description" of the Beneficiary's responsibilities, these references offer no new facts. All previously submitted evidence was considered in our *de novo* review of the record; any documents that were relevant to the Petitioner's eligibility were fully addressed in our prior decision and will not be reevaluated in this proceeding.

dates that preceded the date of the Petitioner's incorporation and contained an incomplete mailing address that was inconsistent with the address indicated as the Beneficiary's place of work.

In addition, we addressed an anomaly which led us to question the overall credibility of the Petitioner's claim regarding the place and dates of the Beneficiary's claimed foreign employment. Namely, we reviewed the Beneficiary's résumé, which we considered in light of the dates and place of the claimed employment; we found it unrealistic for the Beneficiary to have been simultaneously employed by the foreign entity in India and attended school in India given the approximately 250-mile distance between the foreign entity and the school. We also questioned the reliability of the Petitioner's stock certificates, pointing out that the company name does not match the Petitioner's legal name as shown on its certificate of formation.

Although the Petitioner offers new facts in support of its motion, it does not address or acknowledge the additional anomalies discussed in the paragraph above. Further, these new facts were not supported by corroborating evidence.

B. Employment Abroad

On motion, the Petitioner provides a list of discretionary decisions and actions attributed to the Beneficiary; it claims that these decisions and actions demonstrate the Beneficiary's authority to make personnel decisions and set the foreign entity's financial goals. However, the Petitioner does not provide evidence to support these new claims. The Petition also does not resolve the inconsistency that we noted between the Beneficiary's original job description, which indicated that the Beneficiary spent half of her time training and supervising a sales staff, and its subsequent claim that the Beneficiary assumed the role of a function manager. Instead, the Petitioner provides a confusing explanation stating that the foreign entity is a partnership whose only two executives are the partners themselves, all the while continuing to argue that the terms "function manager" and "executive" are both applicable to the Beneficiary. The Petitioner did not provide new evidence to support these claims.

The Petitioner also addresses our finding that the Beneficiary entered the United States in July 2014 in F-1 nonimmigrant classification for the purpose of attending the thereby interrupting her claimed period of employment abroad. The Petitioner contends that the Beneficiary continued working for the foreign entity remotely and researched potential U.S. investments while attending school in the United States. However, the Petitioner does not provide evidence to support this claim, nor does it address our chief concern that the Beneficiary did not enter the United States for the primary purpose of working for the foreign entity's U.S. branch, parent, affiliate, or subsidiary. 8 C.F.R. § 214.2(l)(1)(ii)(A).

Next, the Petitioner addresses our adverse finding that pertains to a photograph purporting to show the foreign entity's storefront. The Petitioner contends that we "failed to mention" previously submitted evidence, which it deems sufficient for the purpose of establishing the foreign entity's existence. We disagree and note that all previously submitted evidence, whether or not it was

specifically mentioned in our prior decision, has been considered. Contrary to the Petitioner's unsupported claim, our questions concerning the validity of a previously submitted photograph did not result from an oversight or failure to consider previously submitted evidence.

C. U.S. Employment

The Petitioner also addressed our concerns pertaining to the Beneficiary's proposed employment in the United States. As discussed earlier, we questioned the validity of bank statements, which suggest that the Petitioner existed prior to the date of its corporate formation. The Petitioner explained that the bank statements belonged to [redacted] a previously existing entity that predated the Petitioner. The Petitioner claims that it ultimately purchased the previously existing entity after finalizing a purported purchase agreement in 2016 and states that it was incorporated in November 2016, after execution of that agreement.

However, the Petitioner did not provide a purchase agreement to corroborate this new claim. Moreover, the new claim contradicts the Petitioner's previously submitted exhibit list, which listed and described exhibits that were submitted initially in support of the petition. The exhibit list indicated that the bank statements were submitted as part of supporting Ex. H, which was described as "Copy of Corporate Bank Account for the new U.S. entity to prepare to begin U.S. business operations upon approval of the petition." Nowhere in the exhibit list, or elsewhere in the record, did the Petitioner state that the bank statements belong to another entity, nor did it previously claim or provide evidence to show that it was purchased from a previously existing entity whose name was remarkably similar to its own. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Accordingly, we find that the Petitioner's claim that the address discrepancy we noted in the bank statements was the result of "a typographical error" was equally insufficient; the Petitioner has once again submitted no evidence to support its claim, which we consider in light of the other unresolved discrepancies.

III. CONCLUSION

For reasons discussed above, we find that the Petitioner has not submitted evidence that meets the requirements of a motion to reopen. Therefore, the Petitioner has not shown proper cause for reopening.

ORDER: The motion to reopen is denied.

Cite as *Matter of U-W-C-, Inc.*, ID# 1621616 (AAO Sept. 12, 2018)