U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-I-, INC.

DATE: SEPT. 18, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology company, seeks to temporarily employ the Beneficiary as chief executive officer of its new office[1] under the L-1B 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-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner had secured sufficient physical premises to house the new office; (2) a qualifying entity had employed the Beneficiary abroad for at least one continuous year prior to the filing of the petition; (3) the Beneficiary has been employed abroad in a qualifying capacity; (4) the Beneficiary possesses specialized knowledge; and (5) the Beneficiary will be employed in the United States in a capacity involving specialized knowledge.

The Petitioner filed a combined motion to reopen and motion to reconsider. The Director denied both motions, stating that the filing did not meet the requirements of either type of motion. On appeal, after requesting two extensions totaling 60 days in length, the Petitioner submits a brief that is nearly identical to the statement submitted on motion. Upon review, we will dismiss the appeal.

Before we discuss the appeal itself, we note that counsel for the Petitioner signed the form, claiming the title "general counsel." The petition form must be signed by an authorized signatory of the petitioning U.S. employer. The record, however, shows that counsel has an incorporated law practice separate from the Petitioner, and received legal fees rather than a salary. If, at the time of filing, the Petitioner was merely counsel's client, rather than his employer, then it is not evident that the petition was properly filed; the Petitioner has not formally taken responsibility for the petition by signing it. This issue aside, the Petitioner does not prevail on the merits, as we will explain below.

[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 Petitioner did not appeal the denial order itself, but rather the subsequent finding that the motion did not meet the requirements of a motion to reopen, a motion to reconsider, or both. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us is whether the Director properly found that the motion did not meet applicable requirements. A motion that does not meet applicable requirements must be denied. 8 C.F.R. § 103.5(a)(4).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion and again on appeal, counsel for the Petitioner cited this definition, but did not assert any new facts or submit any new evidence. Therefore, the Director properly found that the motion did not meet the requirements of a motion to reopen.

A motion to reconsider must establish that the underlying decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record 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.

Counsel stated that "USCIS based its decision on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record of proceedings at the time of the decision." But the brief does not establish these errors. Some assertions are too vague to be meaningful, such as the broad claim that the Director disregarded unspecified evidence of eligibility. Others are inapplicable, such as counsel's protest that the Director "never once cited the evidence . . . that is favorable to the petitioner"; there is no requirement for the Director to do so. The Director found that a lease executed in December 2016 did not establish that the Petitioner had secured sufficient physical premises at the time of filing in September 2016; counsel's only response to this material finding is that the Petitioner is free to relocate its offices. This assertion is correct but irrelevant.

Finally, some of counsel's assertions are themselves erroneous. Counsel protests the Director's citation to the *Occupational Outlook Handbook*, but the Director did not cite the *Handbook* in the denial notice. Counsel contends that the Director overlooked evidence that the Beneficiary's former foreign employer is doing business, but the Director made no finding to the contrary. Most significantly, counsel asserts that the decision did not explain how the Director concluded that the Beneficiary lacked the necessary experience and specialized knowledge. But the Director devoted three pages of the decision to the issue, identifying several deficiencies that counsel has not addressed or rebutted on motion or appeal.

For the above reasons, we find that the Director properly concluded that the Petitioner's filing did not meet the requirements of a motion to reopen or a motion to reconsider. Because the Petitioner established no error in the denial of the motions, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-I- Inc.*, ID# 1575880 (AAO Sept. 18, 2018)