U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S- LLC

DATE: SEPT. 19, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a sports management, marketing and communications company, seeks to amend[1] and extend the Beneficiary's temporary employment as its chief executive officer (CEO) 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 the Beneficiary would be employed in a managerial or executive capacity under the extended petition. The Petitioner appealed the Director's decision and we dismissed the appeal and denied the combined motion to reopen and reconsider that the Petitioner filed following our dismissal of the appeal.

In its current combined motion to reopen and reconsider, the Petitioner submits additional evidence and asserts that we abused our discretion by failing to consider the totality of the evidence, which the Petitioner claims is sufficient to establish that the Beneficiary will primarily manage an essential function of the company, or, alternatively, that he will be employed in an executive capacity.

Upon review, we will deny the combined motion.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision 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. A petitioner must support its motion to reconsider with 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.

[1] The Petitioner previously filed three L-1B classification petitions on behalf of the Beneficiary which authorized him to work in a specialized knowledge capacity as its soccer promotions coordinator for a total period of approximately 4 years and 10 months, from December 2010 until October 2015.

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.

II. ANALYSIS

The primary issue in this matter is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity, as defined at section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, October 29, 2015) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For the reasons discussed below, we will deny the combined motion to reopen and reconsider. While the current motion includes newly submitted evidence and assertions that we incorrectly applied the law and USCIS policy to the facts presented, the Petitioner has not shown proper cause for reopening or reconsideration.

A. Previous AAO Decision

In denying the prior motion, we acknowledged the Petitioner's assertions regarding the Beneficiary's high level of discretionary authority and his central role in the Petitioner's success. However, we found that the Beneficiary is responsible for a number of the Petitioner's operational tasks, including marketing the company's services, and found that he does not allocate his time primarily to performing managerial or executive job duties. We noted that the Petitioner did not specifically address this finding or provide evidence to show that the three independent contractors (whose business cards were submitted in support of the motion) were providing services for the Petitioner at the time the petition was filed.

Lastly, we addressed the Petitioner's eligibility to seek a two-year extension of stay pursuant to 8 C.F.R. § 214.2(l)(15)(ii) (which limits the stay for beneficiaries initially admitted in L-1B status to five years except in those cases in which the beneficiary receives a promotion to a managerial or executive position at least six months prior to reaching that five-year limit and obtains a new USCIS approval for L-1A status at the time the change occurred). We found that the Petitioner did not establish precisely when the Beneficiary was promoted to the position of CEO, thus precluding us from determining that he held this position for at least six months prior to the expiration of his L-1B status.

B. Motion to Reopen

On motion, the Petitioner submits exhibits labeled A through D, including an affidavit from the Beneficiary, stating that his role and duties in the United States have "grown and developed over the course of the last (7) seven years." The Beneficiary claimed that the Petitioner's success in progressing and developing as an organization allowed him to "shift day[-]to[-]day operations to others" and gave him "the freedom to focus on larger and more important responsibilities." The Beneficiary did not specify which tasks he was able to "shift" away from himself or identify the "others" who absorbed the

Petitioner's operational tasks at the time the petition was filed. While the Beneficiary claimed that he has communicated with the heads and management of affiliate and partner organizations since this petition was filed, he does not claim or establish that these communications, or other managerial or executive tasks, consume the primary portion of his time such that would qualify him as either a manager or executive under the statutory definitions. Likewise, although the Beneficiary has discretionary authority over the Petitioner's operations, in order to establish that the Beneficiary qualifies for the benefit sought, the record must contain evidence demonstrating that the Beneficiary is and would allocate his time primarily to managerial or executive duties.

Further, while we acknowledge the Petitioner's submission of new evidence, including coaches' résumés verifying their respective credentials, coaching contracts, a translated representation agreement, and a proposal and corresponding contract from the Petitioner does not explain how these documents address the critical issue concerning the Beneficiary's daily job duties and whether he would primarily spend his time performing job duties that meet the statutory criteria of managerial or executive capacity.

The Petitioner argues that our prior decision was unclear as to whether we considered its previously submitted evidence, claiming that we did not adequately explain why the submissions were insufficient to overcome the basis for denial. We disagree and point to our statement where we acknowledged the Petitioner's submission of "nine exhibits labeled A through J" and included a list of the types of evidence the Petitioner submitted. We then determined that while the newly submitted evidence addressed the issue of whether the Petitioner continues to do business, it is not accompanied by an explanation of how such evidence is relevant to the Beneficiary's employment in a managerial or executive capacity. Thus, we find that our explanation contradicts the Petitioner's assertion that our decision is "void of any actual reasonable, cogent, or detailed reasoning."

The Petitioner also provides an explanation about the significance of the business cards it submitted in support of its prior motion, arguing that our assessment of the evidence was incorrect. Specifically, the Petitioner argues that the business cards were not intended to show that the individuals named therein were employed or paid by the Petitioner or that they reported to the Beneficiary, but rather that they "are connected to [the Petitioner] . . . as independent contractors." The Petitioner's argument is unclear and precludes a meaningful comprehension of what is meant by "independent contractor" and how the three claimed contractors are relevant to the key issue of whether the Beneficiary's proposed employment would be in a managerial or executive capacity. If the individuals who are named in the business cards are not paid by the Petitioner for rendering services and if they do not report to the Beneficiary, it is unclear how they assist in relieving the Beneficiary from having to primarily perform the daily operational tasks of the organization.

Further, while the Petitioner differentiates between local and international business, it neglects to explain the relevance of this distinction to the Beneficiary's role as a manager or executive. In other words, it is unclear why engaging in international, versus local, business supports the claim that the Beneficiary will be employed in an executive capacity. The Petitioner also has not explained how "the sophisticated nature of the [Petitioner's] business" or the Beneficiary's "level of involvement in large-scale international deals" establish that the Beneficiary's position would involve primarily managerial or

executive, as opposed to operational, job duties. Likewise, while we consider the Beneficiary's autonomy and senior level position, these are only two among the multiple factors that we consider in determining whether the proposed employment would be in a managerial or executive capacity. The Beneficiary's job duties and staffing of the employing organization are two of the key factors we consider. The record shows that we took these factors into consideration prior to making a determination regarding the Petitioner's eligibility.

Finally, in an effort to establish that the Beneficiary would assume the role of a function manager, the Petitioner states that its success and "continued sustaining operations hinge" on the Beneficiary's continued employment with the organization. While we are aware of the Petitioner's needs and the Beneficiary's critical role within the organization, neither factor is synonymous with defining an essential function. To establish that the Beneficiary would assume the role of a function manager, the Petitioner must provide a written job offer that clearly describes the duties to be performed in managing the essential function, articulate the essential nature of the function, and establish the proportion of the Beneficiary's daily duties attributed to managing that function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the Beneficiary's job description must demonstrate that he will manage the function rather than perform duties related to the function. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). Merely establishing that the Beneficiary is integral to the Petitioner's operation, as the Petitioner has done in the present matter, is not sufficient to establish that his proposed duties would primarily involve managing an essential function.

In sum, we find that the newly submitted evidence does not overcome the denial of the prior combined motion and establish eligibility for the benefit. Therefore, the Petitioner has not shown proper cause to reopen the proceeding.

C. Motion to Reconsider

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 USCIS or Department of Homeland Security policy.

Although the Petitioner provided a brief, which includes a section titled "Motion to Reconsider," that section does not include citations to any relevant statute, regulation, or policy document as required, nor does it otherwise allege an incorrect application of law or policy in our prior decision. We have already addressed the claims made in the Petitioner's previously submitted and current briefs. The Petitioner has not established that our prior decision was incorrect at the time of that decision.

Therefore, the Petitioner has not shown proper cause for reconsideration.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen the proceeding or proper cause for reconsideration.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-S- LLC*, ID# 626568 (AAO Sept. 19, 2017)