U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- INC

DATE: SEPT. 26, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an exporter of weather instruments, seeks to extend the Beneficiary's temporary employment as its general manager 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial capacity. The Petitioner appealed that decision, which we dismissed. The Petitioner then filed a motion to reopen. We denied the motion, finding that it did not contain new facts relevant to the time the Petitioner filed the petition in February 2015.

The matter is now before us on a motion to reconsider. On motion, the Petitioner asserts that we erred by applying an improper standard of proof and by disregarding relevant facts that the Petitioner previously introduced into the record.

We will deny the motion.

A motion to reconsider is based on an incorrect application of law or policy, and must also establish that the decision was incorrect based on the evidence of record at the time of the previous decision. *See* 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. We cannot grant a motion that does not meet these requirements. 8 C.F.R. § 103.5(a)(4).

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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.*

The Petitioner cites to *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), which states that a petitioner must establish eligibility by a preponderance of the evidence. The Petitioner states that the Director erred by applying "a subjective consideration of facts" which led to an arbitrary or capricious decision. The Petitioner is correct in stating, as a general principle, that USCIS cannot arbitrarily or capriciously deny a benefit when the Petitioner has established eligibility by a preponderance of the evidence. But the Petitioner has not shown that we erred in this way when we denied its motion to reopen. The Petitioner alleges no specific errors of law. While the Petitioner also alleges two errors of fact, the record does not support these assertions, as discussed below.

In our decision denying the Petitioner's motion to reopen, we stated that the Petitioner had not established that the Beneficiary's three subordinate "employees were managerial, supervisory or professional staff." On motion from that decision, the Petitioner states that our finding "is wrong because evidence previously submitted shows that at least two of the petitioner's employees are professional." Specifically, the Petitioner's operation manager and secretary each hold a bachelor's degree in business administration.

As we explained in our initial appellate decision, we focus on the level of education required by the position, rather than the degree held by the subordinate employee. In our October 2016 appellate decision, we found that the Petitioner had not established that the subordinate positions require bachelor's degrees. The Petitioner did not address this finding in its November 2016 motion to reopen.

Furthermore, as we noted in our second decision, issued March 2017, the Petitioner did not yet employ a secretary at the time of filing.[1] Therefore, even if the Petitioner had established that secretarial positions are professional, this information would not establish eligibility at the time of filing the petition as required by 8 C.F.R. § 103.2(b)(1). Subsequent developments cannot retroactively cause a previously ineligible petitioner to become eligible as of the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Because we previously addressed the question of whether the Beneficiary's subordinates are professionals, and the Petitioner has not overcome that prior finding, the Petitioner has therefore shown no error of fact with respect to the claimed professional status of some of its employees.

In our March 2017 decision, we stated:

> Much of the remaining evidence . . . [postdates the filing of the petition and therefore] cannot establish eligibility at the time the underlying petition was filed in February 2015 . . . . Evidence of hiring that occurred a year after filing does not provide proper cause to reopen the proceeding . . . .

[1] A 2015 organizational chart showed the position as vacant.

> Finally, the Petitioner has submitted new evidence showing that it was using the services of a tax and accounting firm and a freight forwarder as of the date of filing. However, we cannot find that this evidence "shows that [the Petitioner] uses independent contractors to perform all its necessary functions in order to export and sell its products," as stated in the Petitioner's brief. While we noted in our prior decision that the Petitioner did not adequately support its claim that it uses independent contractors to perform certain functions, the Petitioner's newly-documented engagement of an accountant and a freight forwarder does not address or overcome the many other deficiencies in the record, as discussed at length in our prior decision and summarized above.

The Petitioner, on motion, conflates these two paragraphs, even though they addressed two separate issues. The Petitioner first quotes part of the second paragraph shown above, and then states: "We respectfully disagreed . . . because the petitioner's submitted evidence is not only dated year 2016, but also year 2015." The Petitioner, here, appears to address a finding that we did not make. We acknowledged in our prior decision that the Petitioner "was using the services of a tax and accounting firm and a freight forwarder as of the date of filing" in 2015. But it does not follow, as the Petitioner asserts, that "[t]here is no question that [the Petitioner] uses independent contractors to perform *all* its necessary functions" (emphasis added). As we noted in our earlier decision, the evidence of contractors addresses one issue, but leaves the rest unresolved.

The Petitioner has not established errors of fact or incorrect applications of law or policy in our prior decision. Therefore, we cannot grant the motion to reconsider.

ORDER: The motion is denied.

Cite as *Matter of C- Inc*, ID# 592586 (AAO Sept. 26, 2017)