U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F- LLC

DATE: SEPT. 26, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of cybersecurity software, seeks to continue the Beneficiary's temporary employment as a senior escalation engineer under the L-1B nonimmigrant classification for intracompany transferees.[1] 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 Beneficiary possesses specialized knowledge; (2) the Beneficiary was previously employed abroad in a capacity that was managerial, executive, or involved specialized knowledge; and (3) the prospective U.S. employment requires specialized knowledge. The Petitioner filed a combined motion to reopen and reconsider, which the Director denied.

The matter is now before us on appeal. On appeal, the Petitioner repeats many of the assertions made on motion.

We will affirm the Director's decision in part, withdraw it in part, and remand the matter for the entry of a new decision consistent with the following analysis.

The Petitioner did not appeal the denial order itself (although the Petitioner contests that denial in the appellate brief). Rather, the Petitioner appealed the Director's 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 initial 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.

[1] The Beneficiary initially obtained L-1B status through a petition filed by a different employer. That company sold part of its business, including a subsidiary that had employed the Beneficiary abroad, to the present petitioner in 2017, and the purchasing company filed a new petition to reflect the change in ownership (and thus the change in qualifying relationship).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

As the Petitioner acknowledged, most of the evidence submitted on motion duplicated earlier submissions. The only exception was a letter from the Beneficiary's supervisor, describing the Beneficiary's work for the Petitioner and its foreign subsidiary. That work was already the focus of the petition; the Petitioner did not specify what new facts, if any, were in that letter.

Therefore, we conclude that the Director properly denied the motion to reopen.

In denying the motion to reconsider, the Director stated:

> Although you provided reasons in an attempt to explain why the previous decision made was incorrect, they are not adequate to establish that the decision was incorrect based on the evidence of record at the time of the initial decision. In addition, your counsel did not cite any precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy.

The Petitioner's motion included a 23-page brief, discussing the denial decision in minute detail and offering responses to specific points. The Director did not sufficiently answer these arguments with the summary conclusion that the Petitioner's assertions "are not adequate to establish that the decision was incorrect." Added to this, the Petitioner *did* cite a precedent decision on motion, and submitted a copy of that decision as well. This demonstrable error raises questions about the Director's review of the record prior to rendering the decision on the Petitioner's motion.

Because the Director has not yet directly addressed the merits of the motion to reconsider, the proceeding is not ripe for us to consider the merits of the underlying petition. The Director must make a specific and informed determination as to whether the Petitioner's assertions warrant reconsideration of the earlier decision.

ORDER: The decision of the Director is withdrawn in part. The matter is remanded for the entry of a new decision on the Petitioner's motion to reconsider, consistent with the foregoing analysis.

Cite as *Matter of F- LLC*, ID# 1663901 (AAO Sept. 26, 2018)