U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27640623

Date: AUG. 1, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a foreign law consulting firm, seeks to employ the Beneficiary temporarily as its Executive Director 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 Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In dismissing the appeal, we determined that the Petitioner had not provided sufficient evidence establishing that it had the organizational structure and staffing to support the Beneficiary in a position where the primary portion of her time would be allocated to duties of an executive nature. Additionally, we noted ambiguities regarding the Beneficiary's job duties and determined that the Petitioner did not establish that the Beneficiary would dedicate her time primarily to performing executive-level tasks. We further explained that because this basis for denial was dispositive of the Petitioner's appeal, we would reserve the Petitioner's arguments regarding the Beneficiary's employment abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is

unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

On motion, the Petitioner submits a brief, its articles of incorporation, corporate documentation pertaining to some of the companies with whom it claims to have business relationships, and documentation pertaining to an individual employed by the Petitioner who holds H-1B nonimmigrant status. It also resubmits copies of previously submitted documents including its organizational charts.

The issue at hand is whether the Petitioner has offered new facts or established that we incorrectly applied the law or U.S. Citizenship and Immigration Services (USCIS) policy to the evidence in the record at the time of our prior decision dismissing the appeal. We note that the new facts in a motion to reopen must possess such significance that "the new evidence offered would likely change the result in the case." *See Matter of Coelho*, 20 I&N Dec. at 473. In other words, a motion to reopen should only be granted under a limited set of circumstances where the Petitioner demonstrates that the new evidence would result in a different outcome. *See id.*

As noted in our prior decision, the Petitioner submitted multiple job descriptions for the Beneficiary but did not explain how the conflicting job descriptions corresponded or overlapped with each other. We further noted that the duty descriptions were largely comprised of vague job duties that conveyed no meaningful information about the tasks the Beneficiary would perform in the daily course of business. Finally, we determined that the record was devoid of evidence showing that the businesses and individuals listed as the Petitioner's service providers constituted "the management" whom the Beneficiary would oversee in carrying out her executive role.

On motion, the Petitioner claims that it previously submitted extensive supporting documentation showing that the Beneficiary is its highest-paid employee and that she supervises a subordinate staff of independent contractors, and argues that we, as well as the Director, incorrectly excluded the independent contractors from the Petitioner's overall employee count for purposes of determining whether the Petitioner had sufficient subordinate staffing to relieve the Beneficiary from performing non-qualifying duties.

Here, although the Petitioner provides a brief and some additional documentation pertaining to its business associates, it does not present new facts to establish that we erred in dismissing the appeal. The Petitioner's motion relies primarily on evidence in the record, and restates, nearly verbatim, most of the arguments it submitted in its appellate brief. The Petitioner also reiterates on motion the information provided in the original job descriptions and claims that its original submissions adequately described the Beneficiary's proposed employment.

We disagree with the Petitioner's assertion that it previously provided sufficient duty descriptions and evidence to demonstrate that the Beneficiary will be employed in a primarily executive capacity. This issue was raised previously by the Director in denying the petition as well as when a request for additional supporting documentation was made prior to adjudication. Although the Petitioner was informed of the evidentiary deficiencies and had multiple opportunities to supplement the record with additional evidence in support of the Beneficiary's claimed executive capacity, the Petitioner declined do so and instead maintained that its original submissions were sufficient to satisfy its evidentiary burden. Although the Petitioner had the opportunity to address this evidentiary deficiency on appeal

with us, it declined at that time to submit any additional new evidence specific to the Beneficiary's claimed executive capacity or its staffing structure, and we note that this evidentiary deficiency formed the primary basis upon which we dismissed the Petitioner's appeal.

We note the Petitioner's submission on motion of corporate summaries from the State of Florida's Division of Corporations for its claimed business associates, which confirm the active corporate status of these companies. Although the Petitioner claims to provide international consulting, professional alliances, financial auditing, foreign legal consulting, real estate consulting, and tax consulting, and indicated that it employed these entities to provide such services, we noted in our prior decision that the Petitioner provided no formal contractual agreements documenting the claimed business relationships with these service providers. The evidence submitted on motion does not overcome this evidentiary deficiency or otherwise present new facts that would warrant reopening of the proceeding, but merely verifies their active corporate status.

The Petitioner also provides evidence pertaining to one of its employees who was approved for H-1B nonimmigrant status in January of 2022, and questions why this individual's visa application was approved given the fact that the Beneficiary in the instant petition has more responsibilities and holds a higher rank within the Petitioner's organizational hierarchy. The H-1B nonimmigrant classification for specialty occupations, set forth in section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position. The requirements for the nonimmigrant classification for intracompany transferees, however, fall under section 101(a)(15)(L) of the Act. The two classifications have different evidentiary requirements, and each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The Petitioner's attempt to compare the facts of an approved H-1B petition to the facts of the instant petition does not constitute a new fact and is not a basis for reopening the proceeding.

As stated in our prior decision, the Petitioner did not adequately describe the Beneficiary's proposed job duties but rather provided multiple incongruent job descriptions that offered little insight as to the specific activities the Beneficiary would undertake within the Petitioner's operation. We further noted that the Petitioner's primary focus appeared to be outsourcing consulting services in various business sectors, and the record as constituted did not establish that the Petitioner had an organizational structure for the Beneficiary to manage in an executive capacity as contemplated by section 101(A)(44)(B) of the Act. Nothing on motion addresses or overcomes this issue. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (*citing INS v. Abudu*, 485 U.S. 94 (1988)). With this motion, the Petitioner has not met that burden.

ORDER: The motion to reopen is dismissed.