U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30316085

Date: MAR. 15, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a cellular phone retailer, seeks to permanently employ the Beneficiary as its controller under the first preference immigrant classification for multinational executives or managers. See Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish it would employ the Beneficiary in the United States in an executive capacity, and that the Beneficiary was employed abroad in a managerial or executive capacity. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

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 reconsider must establish that our prior 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii).

In dismissing the appeal, we determined the Petitioner did not meet its burden to demonstrate that the Beneficiary would be employed in the United States in an executive capacity as claimed, noting it had submitted inconsistent and inadequately supported assertions regarding his intended duties and level of authority. Further, we concluded that the Beneficiary had a disqualifying three-year break in the continuity of his employment within the Petitioner's multinational organization that prevents him from meeting the statutory foreign employment requirement for this classification. Finally, we determined the Petitioner did not meet its burden to establish the required qualifying relationship with its claimed foreign affiliate, observing that the record contained inconsistent and incomplete evidence of ownership for both the U.S. and foreign entities.

On motion, the Petitioner contests the correctness of our prior decision and attempts to clarify certain inconsistencies in the record. With respect to the Beneficiary's proposed U.S. employment, the Petitioner explains a reference to an unrelated industry in his job description as a "typographical error." It also clarifies that the company organizational chart submitted on appeal was significantly different from the organizational chart submitted at the time of filing because the chart submitted on appeal depicted the company's staffing and structure at a later date.

However, these explanations do not address how we misapplied the law or U.S. Citizenship and Immigration Services (USCIS) policy in concluding that the Petitioner did not meet its burden to show that, as of the date of filing in July 2022, the Beneficiary's offered position met all four elements set forth in the statutory of executive capacity at section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Further, our decision did not rest entirely on observed inconsistencies in the Beneficiary's job description or the submitted organizational charts. Rather, we reviewed the totality of the evidence and explained why the Petitioner did not demonstrate that the Beneficiary would primarily perform executive duties and "direct the management of the organization" as required by section 101(a)(44)(B)(1) of the Act.

In addition, the Petitioner asserts "[y]our officer neglects to comprehend that the beneficiary is responsible for filing the appropriate financial reports with respective authorities," that "any successful business must prepare financial reports," and that "these tasks are far beyond the duties of a manager or supervisor." However, we directly addressed these claims in our prior decision, noting that the Petitioner cited no source or authority to support its contention that "any . . . business," regardless of its size or structure, requires an executive-level employee to take responsibility for its financial matters and to primarily perform duties consistent with the statutory definition of executive capacity. We did not question that the Beneficiary has some degree of discretionary authority over the company's financial activities; rather, we explained why this authority alone does not establish his eligibility for classification as a multinational executive.

The Petitioner also addresses the Beneficiary's foreign employment, stating for the first time that he "has served as the Controller for the foreign company and he qualifies as a Specialized Knowledge Professional" in accordance with the definitions of "specialized knowledge" and "specialized knowledge professional" at 8 C.F.R. § 214.2(l)(1)(ii)(D) and (E). While the Petitioner appears to imply that USCIS should have considered whether the Beneficiary was employed abroad in a specialized knowledge capacity, the cited definitions are applicable only to petitions for L-1 nonimmigrant intracompany transferees. The Petitioner's claim that the Beneficiary was employed abroad as a specialized knowledge professional, even if supported by the record, would not demonstrate his eligibility for the immigrant classification sought.

Classification as a multinational executive or manager under section 203(b)(1)(C) of the Act may only be granted to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity as defined at section 101(a)(44)(A) and (B) of the Act. In our prior decision, we emphasized that the Beneficiary, who had been in the United States in B-2 and F-2 nonimmigrant status for more than three years at the time of filing, had a disqualifying interruption in the continuity of his employment within the Petitioner's multinational organization. Accordingly, we concluded he could not meet this statutory requirement and would remain ineligible for this classification until he departs the United

States accrues a year of employment in a managerial or executive capacity with a qualifying entity outside the country. The Petitioner does not address this determination on motion and therefore has not established that our conclusion was based on an incorrect application of law or policy.

Lastly, the Petitioner addresses our determination that the evidence submitted to establish its qualifying relationship with the Beneficiary's foreign employer was inconsistent and incomplete. The Petitioner claimed an affiliate relationship, as defined at 8 C.F.R. § 204.5(j)(2) and stated that the U.S. and foreign entities are both owned and controlled by the same two individuals (K-D- and M-D-). As noted in our prior decision, the evidence submitted to establish the ownership of the foreign entity consisted of a board resolution listing the "allotment of shares" in the foreign entity. We concluded that the document, because it was only partly legible, does not reliably identify the shareholders of the company. The Petitioner has not addressed this determination on motion.

With respect to the U.S. company's ownership, we emphasized that the Petitioner did not submit relevant evidence such as copies of its stock ledger and stock certificates showing the allotment of the company's issued shares. Further, we noted that although the Petitioner was established as a Texas corporation in [redacted] 2021, it submitted, without explanation, a copy of a partnership agreement detailing the initial capital contributions of the claimed owners. Finally, we emphasized that the Petitioner's 2021 federal income tax return indicates that R-D- owns 95% of the company's shares while R-P- owns 5% of the shares, and therefore contradicts the Petitioner's claim that M-D- and K-D- own the company.

On motion, the Petitioner asserts that K-D- and M-D-, as owners, each made a $20,000 capital investment in the company but "did not deem it necessary to issue stock certificates." Further, the Petitioner attempts to explain the discrepancies in ownership we observed in its 2021 income tax return. It states that its foreign owners report income from the business on their own individual tax returns, and that "Form 1125-E, Compensation of Officers reported the compensation paid to the beneficiary and [redacted] as employees of the business, not owners."

The Petitioner's brief explanations do not overcome our prior determination on this issue or establish the claimed qualifying relationship. The Petitioner previously provided a complete copy of its 2021 income tax return, including Schedule G, which identifies R-D- as the owner of 95% of its stock. Further, contrary to the Petitioner's assertion on motion, the submitted Form 1125-E also identifies R-D- as the company's majority owner. The Petitioner does not claim that the tax return contains errors and has not adequately addressed the deficiencies in the record with respect to its claimed qualifying relationship with the foreign entity.

For the reasons discussed, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.