U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29024248

Date: NOV. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner – a jewelry designer, maker, and seller – seeks to employ the Beneficiary as its president. The company requests his classification under the employment-based, first-preference (EB-1) immigrant visa category as a "multinational executive." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This category allows multinational organizations to transfer qualified noncitizens from abroad to permanently work in the United States in managerial or executive capacities.

The Director of the Nebraska Service Center denied the petition and the Petitioner's following two combined motions to reopen and reconsider. The Director concluded that the company neither demonstrated the Beneficiary's required employment abroad for at least one year in the claimed executive capacity, nor his proposed U.S. employment in the same claimed capacity. On appeal, the Petitioner contends that the Director disregarded and misanalysed evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record supports the Director's dismissal of the company's most recent motions. We will therefore dismiss the appeal.

I. LAW

A noncitizen qualifies as a multinational executive if – in the three years before their U.S. admission – they worked abroad for at least one year in a managerial or executive capacity. Section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(B). A multinational executive must also seek to provide executive services in the United States for the same foreign employer or its subsidiary or affiliate. *Id.*; *see generally* 6 *USCIS Policy Manual* F.(4)(A), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Motion to Reopen

A motion to reopen must state "new facts," supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). "A motion that does not meet applicable requirements shall be dismissed." 8 C.F.R. § 103.5(a)(4).

The Director dismissed the Petitioner's latest motion to reopen, finding that it lacked new facts. On appeal, the company does not dispute the dismissal. The Petitioner therefore has effectively "waived" challenge to the motion's dismissal. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). We therefore affirm the Director's dismissal of the company's latest motion to reopen.

B. The Motion to Reconsider

The Director found that the Petitioner's latest motion to reconsider did not provide sufficient reasons for the petition's approval. *See* 8 C.F.R. § 103.5(a)(3) (requiring that a motion to reconsider "establish that the [prior] decision was based on an incorrect application of law or [USCIS] policy"). On appeal, the Petitioner contends that the Director disregarded and misanalysed evidence of the Beneficiary's employment abroad and the company's proposed U.S. employment of him.

1. The Beneficiary's Foreign Employment

The record shows that the Beneficiary works in the United States for the Petitioner, the affiliate of his foreign employer. The Petitioner must therefore demonstrate that, in the three years before his U.S. entry as a nonimmigrant, he worked abroad for at least one year in the claimed executive capacity. *See* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(B). Under USCIS policy:

> The 1-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for the petitioner or a qualifying organization. A petitioner cannot use any time that the beneficiary spent in the United States to meet the 1-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ [them] while [they were] in the United States.

2 *USCIS Policy Manual* L.(6)(G)(1) (in the context of L-1 nonimmigrant visa petitions, explaining the one-year foreign employment requirement).[1]

The Petitioner asserts its compliance with the one-year foreign employment requirement. The company contends that the Beneficiary worked for its affiliate in Canada for at least one year, from the affiliate's incorporation in [redacted] 2018 until his U.S. entry in nonimmigrant E2 visa status in

[1] Petitioners for both L-1 nonimmigrants and multinational executives/managers must demonstrate that beneficiaries spent at least one year working abroad during prior three-year periods. *Compare* 8 C.F.R. § 204.5(j)(3)(i)(B) *with* 8 C.F.R. § 214.2(l)(1)(ii)(A).

October 2019. *See* section 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E) (allowing nationals of certain countries, through treaties, to carry on trade in the United States or to develop and direct U.S. enterprises in which they have invested). The company states that, at the time of his U.S. entry in October 2019, the Beneficiary and his family moved to the United States, and he began work as the company's president.

The Petitioner concedes, however, that the Beneficiary previously entered the United States in E2 status on June 20, 2019 and remained in the country until October 16, 2019. Ten days later, as the company states, he re-entered the United States in E2 status with his family. The company states that he entered the U.S. in June 2019 "to oversee the business."

The purpose of the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) is to allow nonimmigrant managers or executives who are already working for qualifying organizations in the United States to qualify for immigrant visa classification as multinational managers or executives. *Matter of S-P-, Inc.*, Adopted Decision 2018-01, *3 (AAO Mar. 19, 2018). Under the regulation, the Petitioner must demonstrate the Beneficiary's work abroad for one year "in the three years preceding entry as a nonimmigrant." *See* 8 C.F.R. § 204.5(j)(3)(i)(B). The record shows that the Beneficiary entered the United States as a nonimmigrant to work for the Petitioner on June 20, 2019 and October 26, 2019. But we need not determine which date marks the end of the relevant three-year period, as the Beneficiary would not qualify using either date.

Using the date of the Beneficiary's first E-2 entry, the Canadian entity would have employed him abroad from [redacted] 2018 to June 2019. This period falls short of one year and thus would not meet the requirements of 8 C.F.R. § 204.5(j)(3)(i)(B).

Using the date of Beneficiary's second E2 entry, the Petitioner contends that he would have worked in Canada from [redacted] 2018 to October 2019. That period exceeds one year. But, as previously indicated, USCIS records and copies of the Beneficiary's travel documents show that, during that [redacted] month period, he remained in the United States in E2 status for almost four months, from June 20, 2019 until October 16, 2019. "A petitioner cannot use any time that the beneficiary spent in the United States to meet the 1-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ [them] while [they were] in the United States." 2 *USCIS Policy Manual* L.(6)(G)(1). Thus, because the Beneficiary spent less than one year in Canada in the period from [redacted] 2018 and October 2019, he did not work at least one year abroad.[2]

Also, the Petitioner has not demonstrated the claimed executive nature of the Beneficiary's work in Canada. The term "executive capacity" means work "primarily" involving:

- Directing the management of an organization or a major component or function of it;
- Establishing goals and policies;
- Exercising wide latitude in discretionary decision-making; and
- Receiving only general supervision or direction from higher-level executives, a board of directors, or stockholders.

[2] USCIS records also show that, between March 2019 and June 2019, the Beneficiary remained in the United States as a visitor for about 45 days. This visiting time in the United States also does not constitute employment abroad.

Section 101(a)(44)(B) of the Act.

As the Director found, a letter from the affiliate's director/secretary does not establish the Beneficiary's work in the claimed executive capacity. To meet the definition of the term "executive capacity," the Petitioner must, in part, demonstrate the Beneficiary's direction of the affiliate's management. *See* section 101(a)(44)(B)(i) of the Act. The phrase "direct the management" in that provision requires an executive to exercise control over a subordinate level of managerial staff. *VHV Jewelers, LLC v. Wolf*, 17 F.4th 109, 114-15 (11th Cir. 2021). Neither the letter nor a 2018 organizational chart establishes the Beneficiary's direction of the affiliate's management. The materials do not describe his subordinates – a bookkeeper and an administrative assistant – as managers, as their job duties do not include managing personnel or company functions. *See Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070 (9th Cir. 2008) (in the context of an L-1A nonimmigrant visa petition, holding that an employer had not reached the level of organizational sophistication in which a beneficiary could devote his primary attention to managerial/executive duties).

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's employment abroad for at least one year in the claimed executive capacity. We will therefore affirm the Director's finding.

2. The Proposed U.S. Employment

The Petitioner also claims that it would employ the Beneficiary in the United States in an executive capacity. The company contends that, in determining the nature of the proposed U.S. employment, the Director disregarded relevant factors. The company asserts that the Director did not consider: its organizational structure; the existence of other employees to relieve the Beneficiary from having to perform operational duties; or the nature of its business. *See* 6 *USCIS Policy Manual* F.(4)(C)(4).[3]

The record, however, does not support the Petitioner's contention. The Director's original petition denial considered the company's organizational structure by noting an inconsistency between the offered job's duties and the company's organizational chart. The job duties state the Beneficiary's review and analysis of "orders prepared by the Store Manager." But the organizational chart does not list a store manager as a company employee at the time of the petition's filing in May 2020. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility "at the time of filing the benefit request").

The organizational chart also indicates the Petitioner's employment of four people, including the Beneficiary. But the company's initial filing indicated its employment of three people. Also, in a later petition for the Beneficiary, copies of the company's federal payroll tax returns for each of the first three quarters of 2020 and its payroll record for March 2020 list one employee. *See Matter of*

[3] For relevant factors in determining a job's executive nature, the Petitioner cites *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). *Z-A-*, however, does not directly support the relevant factors cited by the company. In the context of an L-1A nonimmigrant visa petition, *Z-A-* discusses relevant factors for determining whether a beneficiary would be a "function manager." *See* section 101(a)(44)(A)(ii) of the Act (stating that the term "managerial capacity" can include management of an "essential function").

Ho, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

The evidentiary discrepancies cast doubt on the Petitioner's organizational structure, number of employees, and the existence of employees to relieve the Beneficiary from having to primarily perform operational duties. *See also Spencer Enters., Inc. v. United States*, 345 F.3d 683, 694 (9th Cir. 2003) (stating that "[n]umerous errors and discrepancies" in a visa petition can raise "serious concerns" about a party's credibility). Although the Director's decision on the Petitioner's most recent combined motions does not specifically repeat these findings, the Director need not have responded to the company's previously addressed arguments. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief [as previously] presented . . . and seek reconsideration by generally alleging error in the prior . . . decision").

Also, the Director's initial denial decision considers the Petitioner's staffing level. The decision states:

> When a company has a limited number of employees it becomes questionable as to whether the beneficiary will be acting primarily in an executive capacity. USCIS may reasonabl[y] conclude in such a case that a wide range of daily functions associated with running a business will be performed by the beneficiary and that these duties are unrelated to the definition of ... executive [capacity].[4]

The remainder of the Petitioner's appellate brief cites one of our decisions that USCIS has adopted as Agency policy: *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). *G-*, however, does not directly relate to the Petitioner's case. Unlike this case, which involves a petition for a multinational executive, our adopted decision focuses on determining whether a beneficiary worked, or would work, as a "function manager" under the definition of "managerial capacity." *See* section 101(a)(44)(A)(ii) of the Act. The Petitioner contends that it would employ the Beneficiary in an executive capacity, not in a managerial capacity as a function manager.

The Petitioner has not demonstrated that it would employ the Beneficiary in the United States in an executive capacity. For this additional reason, we will affirm the Director's decision.

III. CONCLUSION

The Petitioner's latest motion to reopen did not meet applicable requirements. Its latest motion to reconsider demonstrated neither eligibility for the requested benefit nor the Director's misapplication of law or policy.

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[4] When determining whether beneficiaries would work in managerial or executive capacities, USCIS cannot rely solely on their petitioners' number of employees. Section 101(a)(44)(C) of the Act. Here, the Director considered the Petitioner's number of employees when determining the nature of the offered U.S. job. But the Director also considered other relevant factors, including: the company's organizational structure; and the job duties of its other employees. The Director therefore did not violate section 101(a)(44)(C). *See Brazil Quality Stones*, 531 F.3d at 1070 ("[A]n organization's small size, standing alone, cannot support a finding that its employee is not acting in a managerial capacity, but size is nevertheless a relevant factor in assessing whether [an organization's] operations are substantial enough to support a manager.")

ORDER: The appeal is dismissed.