U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32809416

Date: AUG. 2, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, which sells picture frames, seeks to temporarily employ the Beneficiary as its chief financial officer under the L-1A nonimmigrant classification for intracompany transferees. 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 Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity. We dismissed the Petitioner's appeal and several subsequent motions. The matter is now before us on combined motions to reopen and 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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

On motion, the Petitioner repeats prior statements but does not assert any new facts and does not submit any new evidence. Therefore, the motion does not meet the requirements of a motion to reopen and must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

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). 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.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner filed its previous motion in August 2023, and we dismissed that motion in February 2024. Only our February 2024 decision is properly before us on motion. We will not reach further back in the proceeding to reconsider earlier motions or re-adjudicate the merits of the underlying petition.

On motion, the Petitioner contests the denial of the petition and asks that we excuse the untimely filing of an earlier motion. The Petitioner does not identify any claimed error in our February 2024 decision or cite any legal authority to establish that our February 2024 decision was in error.

In its latest motion, the Petitioner states: "Rather than reiterating previous arguments, our intention is to showcase [the Beneficiary's] unique skill set and experience, demonstrating his ideal fit for the executive role within our company."[1] Our February 2024 decision, however, was not based on the Beneficiary's qualifications for the position at the petitioning company. Therefore, such arguments cannot show that our February 2024 decision was in error.

In our February 2024 decision, we made the following observations and determinations:

- In our August 2023 decision dismissing the Petitioner's seventh motion, we concluded that the Petitioner had not claimed or shown that our dismissal of the sixth motion was based on an incorrect application of law or policy. Without such a showing, we would not reach further back in the proceeding to the merits of the underlying petition.
- The Petitioner repeated assertions from previous motions. Specifically, the Petitioner asked that we excuse the late filing of a motion from 2020, and the Petitioner asserted that the Beneficiary's intended position qualifies as an executive capacity.
- We explained that we had already addressed these issues in prior decisions, and that the Petitioner's raising them again in a new motion did not show proper cause for us to revisit those issues or re-adjudicate the petition on its merits.

We stated:

> [T]he scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. 103.5(a)(1)(i), (ii). The Petitioner's contentions in its current motion merely reargue facts and issues we have already considered in our previous decisions. *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 presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Although the Petitioner requests that we consider a supplemental statement in support of its claim that the Beneficiary would be employed in an executive capacity, that issue is not before us in this eighth motion. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

[1] This passage reiterates a sentence in the Petitioner's previous August 2023 motion: "Rather than reiterating the arguments previously made, our intention is to showcase how [the Beneficiary's] distinctive skill set and experience render him an ideal match for the executive role within our company."

If the Petitioner does not address and overcome the above conclusions from our February 2024 decision, then the Petitioner has not shown proper cause for reopening or reconsider the proceeding.

In its latest motion, the Petitioner does not dispute or address the above conclusions from the February 2024 decision. Instead, the Petitioner again asks that we overlook the untimely filing of an earlier motion, and that we consider the merits of the claim that it seeks to employ the Beneficiary in an executive capacity.

We considered the merits of the petition in our appellate decision, issued in October 2018, and in our May 2019 decision dismissing the Petitioner's first motion. The latest motion reiterates previous arguments without addressing the reasons why we dismissed the previous motion in February 2024.

In its latest motion, the Petitioner submits a lengthy discussion of the role of a chief financial officer, apparently identical to information that the Petitioner submitted in support of an earlier motion that we dismissed in December 2019. The Petitioner also submits a chart intended to show that the Beneficiary's intended duties conform to the statutory definition of an executive capacity. The Petitioner submitted the same chart with several earlier motions. When the Petitioner first submitted these materials, we explained why they did not suffice to warrant reversal of our earlier decisions. The resubmission of these same materials does not establish error in our February 2024 decision.

The Petitioner's latest motion to reconsider does not establish that our February 2024 decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.