U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32709513

Date: AUG. 7, 2024

Appeal of California Service Center Decision

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

The Petitioner, an interior design and construction company, seeks to temporarily employ the Beneficiary as president and managing director of its new office 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 record did not establish that: (1) the Petitioner had secured sufficient physical premises for the new office; (2) the Beneficiary's position abroad had been in a managerial or executive capacity; and (3) the new office would support a managerial or executive position within one year after the approval of the petition. The Petitioner then filed a motion to reconsider. The Director dismissed the motion, concluding that it did not meet the requirements of a motion to reconsider because the Petitioner did not establish that the denial was based on an incorrect application of law or policy, or was incorrect based on the record at the time of the decision. The matter is now before us on appeal under 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

Regarding the motion filed after the Director's denial, 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The Petitioner, on appeal, must identify erroneous conclusions of law or statements of fact in the decision being appealed. *See* 8 C.F.R. § 103.3(a)(1)(v). In the matter before us, the decision being appealed is the dismissal of the motion to reconsider, not the earlier denial of the underlying petition. Therefore, we must begin by determining whether the Petitioner, on appeal, has addressed the Director's stated grounds for dismissing the motion to reconsider.

The Director denied the petition on May 6, 2021. The Petitioner filed its motion to reconsider on May 29, 2021. More than a month after filing the motion, the Petitioner submitted supplemental evidence in mid-July 2021. The Director dismissed the motion on July 26, 2021, acknowledging only the statement submitted with the initial motion filing. On appeal, the Petitioner asserts that the Director "has conveniently failed to consider our supplemental documents." The applicable regulations, however, make no provision for supplementing a motion after it has been filed. The instructions for Form I-290B specify: "For motions, you must file any brief and/or additional evidence together with Form I-290B." The Director did not err as a matter of law or policy by limiting consideration to the brief submitted with the Form I-290B.

Also, unlike a motion to reopen, a motion to reconsider must establish that the prior decision was incorrect based on the record at the time of that decision. *See* 8 C.F.R. § 103.5(a)(3). For this reason, the regulations relating to motions to reconsider include no provision for submission of new evidence.

In the notice dismissing the Petitioner's motion, the Director stated that the Petitioner repeated prior claims and provided additional information, but did not "provide reasons for reconsideration that are supported by citations to appropriate statutes, regulations, or precedent decisions when filed and establish that the decision was based on an incorrect application or law or policy, and that the decision was incorrect based on the evidence of record at the time of the decision." The Petitioner cannot prevail on appeal unless it addresses and overcomes these core determinations.

The Petitioner's appeal, however, seeks to contest the denial of the petition, rather than the subsequent dismissal of the motion. The Petitioner does not explain why the Director should have concluded that the Petitioner's May 2021 filing met the requirements of a motion to reconsider.

The Petitioner states that it is appealing the "decision dated July 26, 2021," and that a "review of the aforesaid decision reveals that it was based on incorrect application of the law and policy, and

improper interpretation of the evidence." But the discussion following those introductory remarks focuses on the earlier denial notice without addressing the Director's determinations regarding the sufficiency of the motion to reconsider.

For example, the Petitioner states: "The Service erroneously opines that the record was insufficient to establish physical premises to house a new office." But the Director's July 2021 decision included no determination on the merits of that issue. The Director stated:

> With regard to the physical premise requirement, the statement from counsel reiterates information considered during the adjudicative review of the petition. The statement disagrees with the decision, but it does not provide reasons for reconsideration that are supported by citations to appropriate statutes, regulations, or precedent decisions when filed and establish that the decision was based on an incorrect application or law or policy, and that the decision was incorrect based on the evidence of record at the time of the decision.

Rather than address the above conclusions, the Petitioner reaches back to the May 2021 denial decision and repeats, with further details, statements that the Petitioner previously made in its motion to reconsider. The repetition of these arguments does not suffice, by itself, to establish that the Director erred in dismissing the motion. The Petitioner appealed the Director's July 2021 motion decision rather than the May 2021 denial decision.

Beyond the specific requirements for a motion to reconsider, the Director's dismissal of the motion included limited language addressing two merits issues in the underlying petition. One of these issues concerned the question of whether the Petitioner had established that the new office will support a managerial or executive position within one year after approval of the petition. We will briefly discuss this issue, below, in order to provide context for our current decision.

A petition for a new office must include information about the proposed nature of the new office, describing the scope of the entity, its organizational structure, and its financial goals. 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*). The petition must also include evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*).

In the May 2021 denial decision, the Director cited the above regulations. The Director acknowledged "evidence of a $50,000 wire transfer" into the new office, but concluded:

> While this documentation may indicate some funding has been invested in the new company, it does not provide any other financial information, such as what the projected start-up expenses will be, or when you anticipate the company may be profitable. Without this information, USCIS is unable to determine if the foreign entity has the financial ability to remunerate the beneficiary, or if the $50,000 investment is sufficient to commence doing business in the United States.

The Director also noted that the Petitioner had previously stated: "The nature and scope of the [new office's] operation shall be determined after arrival of the Beneficiary. At this stage, it is premature

to state the needs and plans for exact future services." The Director stated: "Without additional information regarding the nature and scope of [the petitioning] business, the evidence is insufficient to show how the U.S. entity will support the claimed executive position within one year."

On motion, the Petitioner stated: "[T]he funding of $50,000 should be sufficient as it is merely for the startup phase. This amount will be increased once Beneficiary has physical presence in the U.S. and is [able to] commence her duties to direct and manage the U.S. entity." The Petitioner also indicated that its "parent company has been negotiating for construction and interior design joint ventures," at which point "the U.S. Company will be in the position to hire more staff, workers and subcontractors, to execute the projects with additional findings [sic] as needed."

In the decision dismissing the Petitioner's motion, the Director stated that the Petitioner "provides additional information about [the Petitioner's] prospective business endeavors. However, the information does not overcome the reasons upon which this issue was denied."

On appeal, the Petitioner essentially repeats its earlier statement on motion:

> The first wire transfer of $50,000 was the initial investment for incorporating the Company. As a newly established company, [the Petitioner] is planning to follow the direction of the parent Company and increase its capital as its work progress[es].
>
> Besides the offers that the Company has received, The parent Company has been negotiating construction and interior design joint ventures. . . . Once the contemplated projects are finalized, the U.S. Company will hire more staff, workers and subcontractors, to execute the projects with additional findings [sic] as needed.

The Petitioner identified no error of law or policy in the Director's previous decision. That decision had rested, in part, on regulations requiring the Petitioner to establish the scope and finances of the new office. The Director determined that the Petitioner had not met its burden of proof to satisfy those regulatory requirements. Repetition of claims that the Director had already deemed insufficient cannot suffice to overcome the Director's decision.

We agree with the Director that the Petitioner's motion to reconsider did not meet the requirements for such a motion. As such, we conclude that the Director did not err in dismissing that motion.

III. CONCLUSION

The Petitioner has not met its burden of proof to establish, by a preponderance of the evidence, that the Director erred in dismissing the Petitioner's motion to reconsider. Because the Petitioner has not overcome the grounds for dismissal of the motion, we will dismiss the appeal.

ORDER: The appeal is dismissed.