U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33942435

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, a retail cellular phone store, seeks to temporarily employ the Beneficiary as the president of its new office[1] 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 to house its new office, (2) the Beneficiary had been employed abroad in a managerial or executive capacity, and (3) the Petitioner would be able to support the Beneficiary in a managerial or executive position within one year of the petition's filing. The Petitioner filed, and the Director dismissed, four subsequent motions. The matter is now before us on appeal pursuant to 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.

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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).

A motion to reconsider must establish that the 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).

The Petitioner operates a retail cellular phone store and seeks to employ the Beneficiary as its president. In denying the petition, the Director determined that the record did not establish that: (1) the Petitioner had secured sufficient physical premises to house its new office, (2) the Beneficiary had been employed abroad in a managerial or executive capacity, and (3) the Petitioner would be able to support the Beneficiary in a managerial or executive position within one year of the petition's filing.

The Petitioner filed two motions to reopen, a combined motion to reopen and reconsider, and a motion to reconsider, all of which were dismissed by the Director. The matter is now before us on appeal.

The only issue correctly before us is whether the immediate prior decision – that is, the Director's decision to dismiss the motion to reconsider dated November 9, 2023 – was correctly decided. Our review and analysis in this matter, therefore, will focus on that determination. Upon review, we concur with the Director's decision dismissing the motion.

The Director dismissed the motion to reconsider on the basis that it did not provide reasons for reconsideration that were supported by citations to appropriate statutes, regulations, or precedent decisions, and it did not show that the decision was incorrect based on the evidence of record at the time of the decision. Upon review of the Petitioner's submissions on motion, we agree that the motion did not satisfy the requirements of a motion to reconsider.

On appeal, the Petitioner resubmits evidence previously submitted and considered by the Director, along with a brief that contests the Director's initial decision to deny the petition. In fact, a review of the record demonstrates that this brief is identical to the brief previously submitted by the Petitioner in support of its third motion.

Where, as here, an appeal is filed in response to a director's unfavorable action on a motion, the scope of the appeal is limited to the director's decision on that motion. The regulatory provision at 8 C.F.R. § 103.3(a)(2)(i) states: "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions *within 30 days after service of the decision*." (Emphasis added). Thus, if the Petitioner wished to appeal the Director's decision to deny the petition, it should have elected to file that appeal within 30 days of the Director's denial decision. Here, though, the Petitioner elected to multiple motions instead, thus limiting the scope of the appeal to the merits of the Director's decision dated November 9, 2023 dismissing the Petitioner's most recent motion to reconsider.

The Petitioner did not specifically and sufficiently articulate why the Director's dismissing its prior motion was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy, nor did the Petitioner cite to any relevant statute, regulation or relevant precedent decision that would support a contention that the Director's decision dismissing the motion was based upon a misapplication of statute, regulation, or policy to the evidence of record before the Director at the time of that decision. The Petitioner makes no assertion of error with regard to the Director's November 9, 2023 decision dismissing the motion to reconsider, which is the subject of this appeal.

The Director properly determined that the Petitioner's motion to reconsider did not meet the requirements under 8 C.F.R. § 103.5(a)(3).

ORDER: The appeal is dismissed.