U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34407157

Date: AUG. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, described as being in the "herbal and medicine market" and "provid[ing] logistics consulting services," seeks to extend the Beneficiary's temporary employment as chief executive officer 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).[1] 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 initially approved the extension petition, but later revoked that approval, concluding that the record did not establish that the Petitioner employed the Beneficiary in a managerial or executive capacity. We dismissed the Petitioner's appeal from that decision, and two combined motions to reopen and reconsider. After the Petitioner filed a third combined motion, we withdrew the revocation and remanded the matter in order for the Director to issue a notice of intent to revoke (NOIR) that complied with the requirements of 8 C.F.R. § 214.2(l)(9)(iii). Rather than issuing a new NOIR as instructed, the Director denied the petition, and the Petitioner appealed that denial to our office. We again remanded the matter to the Director to take certain specified actions. The matter is now before us on a combined motion 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.

Preliminarily, we note that the regulation at 8 C.F.R. § 103.5(a)(1)(iii) relates to unfavorable decisions. Specifically, it discusses the filing requirements for a motion to reopen and motion to reconsider, stating, in part, that the motion must be "[a]ccompanied by a statement about whether or not the validity of the *unfavorable* decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding" and "[s]ubmitted to the office maintaining the record upon which the *unfavorable* decision was made for forwarding to the official having

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from August 1, 2017 to July 31, 2018. The extension sought in the present petition would have extended the Beneficiary's L-1A status until July 31, 2020.

jurisdiction." 8 C.F.R. § 103.5(a)(1)(iii) (emphasis added). Here, our office did not issue an unfavorable decision, but rather remanded the matter to the Director for issuance of a new NOIR, and as of the date of this decision, the underlying petition remains pending with the California Service Center. Because there is no unfavorable decision for us to reopen or reconsider, and for the reasons outlined below, we will dismiss the Petitioner's combined motion because it does not meet the applicable requirements.

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).

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). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision remanding the matter to the Director for further action. Here, although the Petitioner submits documentary evidence on motion, such documentation pertains to its eligibility for the classification sought and its contention that it should remain approved. The Petitioner has not provided new facts to establish that we erred in remanding the matter to the Director for issuance of a new NOIR. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

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.

On motion, the Petitioner contests the validity of our February 2022 decision revoking the petition's approval and remanding the matter to the Director for issuance of a NOIR that complied with the requirements of 8 C.F.R. § 214.2(l)(9)(iii). As noted above, however, the only issue correctly before us is whether the immediate prior decision - that is, our decision to remand the matter to the Director dated October 31, 2023 - was correct. Nevertheless, we note that we properly withdrew the petition's revocation and remanded the matter to the Director in our February 2022 decision, because the initial revocation notice sent by the Director cited additional grounds not discussed in the NOIR and the Petitioner had not been afforded the opportunity to offer rebuttal on those issues.

On motion, the Petitioner does not assert that our October 2023 decision to remand the matter to the Director 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. In our most recent decision, we noted that the Director's issuance of a denial after our original remand, rather than a NOIR as instructed, was erroneous because there was no pending petition to be denied. We further noted that the only adverse action the Director could have taken with regard to the underlying petition was to revoke its approval, with prior notice, under the procedure set forth at 8 C.F.R. § 214.2(l)(9)(iii). Our most recent decision recognized the procedural error of the Director and properly remanded the matter for issuance of a new NOIR as originally instructed in our February 2022 decision.

The Petitioner also asserts on motion that post-approval site visits that revealed derogatory information warranting revocation of the petition's approval, and subsequent site visits after the revocation was withdrawn that revealed additional derogatory information, violated its due process rights. The Petitioner maintains on motion that it was only required to demonstrate eligibility for the requested classification at the time of filing, and not years later. As stated in our previous decisions, however, the Director may revoke the approval of an L-1 petition at any time, even after the expiration of the petition. *See* 8 C.F.R. § 214.2(l)(9)(i).

In our October 2023 decision, we determined that the Director's new decision was a *denial* of the petition, rather than a *revocation* of its approval. Because we withdrew the petition's revocation in our February 2022 decision, there was no pending petition for the Director to deny. The Petitioner's contentions in its current motion do not allege error on our part in reaching this determination, and 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 has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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 will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.