U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32883298

Date: AUG. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a distribution center for watches and other merchandise, seeks to temporarily employ the Beneficiary as logistics manager 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 Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity, and that the new office would support a managerial executive position within a year of approval of the petition. We dismissed the Petitioner's appeal and four later motions to reopen or reconsider. 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.

In our initial appellate decision, we agreed with the Director's stated grounds for denying the petition, and we cited additional issues that cast doubt on the credibility of the Petitioner's evidence and the Beneficiary's eligibility, including evidence that the Beneficiary had been in the United States as an F-1 nonimmigrant student for more than two years immediately before the petition's December 2016 filing date. This prolonged stay in the United States did not involve authorized employment for the Petitioner or any related entity, and therefore amounted to a disqualifying interruption in the Beneficiary's claimed employment abroad. *See* 8 C.F.R. § 214.2(l)(3)(iii). We dismissed the Petitioner's subsequent motions because they did not meet the requirements of motions to reopen or to reconsider. Most recently, we dismissed the Petitioner's fourth motion in February 2024. *See In Re 29827567* (AAO Feb. 27, 2024).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *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 states that it is "presenting . . . as new evidence" a printout of the "Summary" page of the "Financial Managers" entry in the *Occupational Outlook Handbook*, published by the U.S. Department of Labor's Bureau of Labor Statistics. The Petitioner asserts that this printout "serves as evidence of the beneficiary's qualification to serve as a Financial Manager." The Petitioner also stated that it "previously submitted evidence of the beneficiary's specialized knowledge, training, education and skills to serve as the Retail Manager for the foreign business." The Petitioner does not establish that the titles "retail manager" and "financial manager" are interchangeable.

More relevant here, our prior decision, in February 2024, did not address the question of whether the Beneficiary was qualified to work as a financial manager. Our February 2024 decision was based entirely on procedural deficiencies in the Petitioner's fourth motion. As we stated in that decision: "at this late date we will not consider arguments about earlier decisions until and unless the Petitioner overcomes the dismissal of the third motion. We will not re-adjudicate the petition anew." The new evidence is intended to address earlier decisions, and does not establish that our February 2024 decision was in error.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the newly submitted evidence does not establish proper cause to reopen the proceeding. We will dismiss the motion to reopen. *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). 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). A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented previously and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

In dismissing the Petitioner's fourth motion, we acknowledged the Petitioner's submission of an employment verification letter, dated March 2017; purported payroll records, dated July 2016; and the Beneficiary's résumé. Noting that the Petitioner had previously submitted all these documents, we stated: "Because the Petitioner asserts no new facts and has submitted no new evidence, the Petitioner's fourth motion does not meet the requirements of a motion to reopen and must be dismissed. *See* 8 C.F.R. § 103.5(a)(4)."

On motion, the Petitioner acknowledges our conclusion that "the evidence . . . isn't new," but does not establish, or claim, that this conclusion was in error.[1] Instead, the Petitioner asserts that "lending institutions . . . around the world accept these documents as evidence of employment." This assertion is not relevant to the conclusions and determinations in our February 2024 decision, and therefore it

[1] We discussed all these materials in our November 2017 decision, dismissing the Petitioner's appeal.

does not establish proper cause for reconsideration. In our initial appellate decision, we did not conclude that the *types* of evidence the Petitioner submitted inherently lack credibility. Rather, we noted that they contained discrepancies and inconsistencies which cast their reliability into question. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In subsequent decisions, we concluded that the Petitioner has not overcome these issues.

The Petitioner argues that the Beneficiary's claimed position abroad as a retail manager entailed the required level of responsibility, and that, in the United States, "[t]he beneficiary will be responsible for preparing the financial statements," required for "any successful business." This attempt to reach back to the merits of the underlying petition does not identify any error of fact, law, or policy in our February 2024 decision. Therefore, the Petitioner's latest assertions about the Beneficiary's claimed duties abroad and in the United States do not show proper cause for reopening the proceeding.

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, we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4).

Because the Petitioner has not established new facts that would warrant reopening of the proceeding, and has not established errors of fact, law, or policy in our February 2024 decision, we have no basis to reopen or reconsider our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.