U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 3845237

Date: AUG. 29, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a floor cleaning business, seeks to continue to engage the Beneficiary's temporary services as managing member under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the former new office could now support a managerial or executive capacity after its first year of operations. The Director declined the Petitioner's request to treat the petition as a new office petition, and instead considered the petition to be a request to extend the validity of the prior new office petition. The Director denied that extension, concluding that the record did not establish, as required, that the former new office could now support a managerial or executive capacity after its first year of operations.

The Petitioner appealed that decision, asserting that a petitioner can file a second new office petition on behalf of the same beneficiary. We dismissed that appeal, stating that, for a given beneficiary working for a given petitioner, the regulations provide for only one year of L-1 status in a new office. We also determined that the Petitioner no longer qualified as a new office when it filed the present petition in April 2017.

The matter is now before us on a motion to reconsider. On motion, the Petitioner states that the regulations do not expressly limit a beneficiary to only one year of L-1 status for a new office, and the fact that the regulations do not expressly allow for the approval of a second new office petition is not a legal basis for prohibiting the same. It further asserts that it continued to qualify as a new office

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period April 14, 2016, until April 13, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

when it filed the petition in April 2017. The Petitioner does not assert that the present matter is an extension petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider.

I. LAW

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reconsider must establish that our 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 a motion that meets these requirements and establishes eligibility for the benefit sought.

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).

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. ANALYSIS

The Petitioner previously filed a petition for a new office in January 2016. The Director approved that petition on April 14, 2016, granting the Beneficiary L-1A status until April 13, 2017. The Petitioner filed the present petition on April 11, 2017, and requested another one year period from April 11, 2017, to April 10, 2018. Following the Director's denial of the petition, we dismissed a subsequent appeal.

In our prior appellate decision, we determined that the regulations provide for only one year of L-1 status for a new office petition. After that one year, the beneficiary may remain in L-1 status with the same employer only through extension of status. We stated in our prior decision that the regulations

expressly limit a beneficiary to one year of L-1 status relating to a new office, and that there is no provision for providing an additional full year of L-1 eligibility under the terms of a new office petition. We cited the following regulation:

> If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (l)(14)(ii) of this section that it is doing business as defined in paragraph (l)(1)(ii)(H) of this section to extend the validity of the petition.

8 C.F.R. § 214.2(l)(7)(i)(A)(3). We interpreted this regulation to mean that, after the one-year new office period, a beneficiary may remain in L-1 status with the same employer only through extension of status.

We stated in our appellate decision that the Petitioner cited no authority that would allow the Petitioner to decouple the Beneficiary's ongoing L-1A status with the same employer from the petition that first granted that status. We noted that a denial of extension of stay is not appealable. See 8 C.F.R. § 214.1(c)(5).

On motion, the Petitioner asserts that the L-1 regulations provide a petitioner four separate and alternative ways to apply for L-1 status on behalf of a beneficiary, and that the Petitioner is permitted to file a second new office petition under the third option below:

1. Three years of initial L-1 status;
2. Two years of extension of L-1 status;
3. One year of initial new office L-1 status; and
4. Two years of extension of L-1 new office status.

The Petitioner asserts that 8 C.F.R. § 214.2(l)(7)(i)(A)(3) does not refer to the beneficiary's status; that it does not address the procedure for filing a second petition relating to a new office; and that it does not expressly prohibit the filing of a second petition relating to a new office. It notes that the procedure for filing a new office L-1 petition is more burdensome than filing an extension petition.

The Petitioner also acknowledges that while "there can never be an extension of nonimmigrant status without approval of the underlying nonimmigrant visa petition, there is no requirement that the subsequent underlying nonimmigrant visa petition must be based on the same regulatory basis as the initial underlying nonimmigrant visa petition." It states that approval and grant of an extension of status are two separate issues, and that, for example, an L-1 extension petition can be approved while the beneficiary's extension of status can be denied. It states that a beneficiary may extend nonimmigrant status "as long as there is an approvable nonimmigrant visa petition filed in support of the extension of said status." It asserts that [t]here is no requirement that the petition that initially supported the beneficiary's status must itself be extended." In sum, it states that the regulations provide the basis for filing the new office petition; that the Petitioner meets all of the filing qualifications; and that the regulations do not expressly prohibit the approval of such a petition.

On motion, the Petitioner has not demonstrated that our prior decision is based on an incorrect application of law or policy. The Petitioner is not eligible to secure a second full year of status as a new office.

First, on motion, the Petitioner states that approval and grant of an extension of status are two separate issues. The Petitioner relies on examples that differ from the present case in critical ways. Citing the example of an L-1A extension petition, the Petitioner states that "an extension of an L-1A new office petition could be approved while the beneficiary's extension of status is denied." This petition, however, is not an extension petition, in which the Director would make two separate decisions regarding the petition and the extension.

The Petitioner also uses the example of a beneficiary who has been in H-1B nonimmigrant status with one employer and seeks extension of H-1B status to work for another employer. The Petitioner contends that such an extension of status is "clearly approvable if the petition filed by [the new employer] is approved." However, in the present case, the employer is the same in both petitions, and the regulations clearly limit a given beneficiary to one year of initial L-1 status in a "new office."

The Petitioner also provides the example of a "beneficiary of an L-1A new office petition who seeks to transfer his L-1A status from the subsidiary that filed the initial L-1A new office petition, to another subsidiary of the qualifying organization which already fully qualifies to employ the beneficiary as a manager or executive." This case, however, does not involve the transfer of a beneficiary from one office to another. The Petitioner seeks for exactly the same employing office to qualify as a "new office" for two years instead of one.

Second, the Petitioner states that a beneficiary may extend nonimmigrant status "as long as there is an approvable nonimmigrant visa petition filed in support of the extension of said status." However, there is not an approvable petition supporting the Beneficiary's status. The regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3) specifically states that after the approval of an initial one year to work in a new office, the proper procedure is to file an extension of status petition, not a second petition for a new office.

We noted in our decision that the regulations provide for only one year of L-1 status in a new office, and that "[n]ew office status is contingent on progress towards more fully establishing the business." If the new office has not made that progress by the end of the year, "then this deficiency is grounds for ending the immigration benefit." The regulations intentionally provide a shorter validity period for new office petitions than for other L-1 petitions. The distinction loses any meaning, however, if a petitioning employer is permitted to remain a "new office" indefinitely simply by delaying or limiting its business activity.

The Petitioner asserts that the regulations do not expressly prohibit a second year as a new office. This argument relies on an erroneous understanding of the regulations. Immigration benefits can only be approved within the limitations established by the statute and regulations. The regulations do not need to specifically prohibit a second year as a new office; they do not expressly permit a second year. The new office provisions are regulatory, rather than statutory. Therefore, the absence of a regulatory provision for a second year as a new office rules out approval for a second year.

Third, the Petitioner's interpretation of 8 C.F.R. § 214.2(l)(7)(i)(A)(3) ignores the regulatory definition of a "new office" as 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). At the time of filing in April 2017, the Petitioner asserted that its "U.S. operations did not begin the regular, systematic and continuous provision of its services until July 2016," and therefore that it "has been doing business for less than one year as of the date the instant petition is being filed." Thus, the Petitioner claimed that it "continues to qualify as a new office." The Director determined that the Petitioner no longer qualified as a new office.

In our prior decision, we determined that the Petitioner did not qualify as a new office when it filed the present petition on April 11, 2017. We noted that the Petitioner purchased cleaning equipment in the earliest months of 2016, and issued invoices for cleaning services performed as early as March 1st of that year. We indicated that the record does not specify a particular point when the sporadic, occasional provision of services became regular, systematic, and continuous, but that the record did not support the Petitioner's assertion that business activity began in earnest as late as July 2016.

On motion, the Petitioner states that in order to qualify as a new office on April 11, 2017, the Petitioner "would only need to show it had not begun fully doing business as of April 13, 2016, in order to still be considered a 'new office' on April 11, 2017." It asserts that if "the record is unclear as to when the Petitioner first began doing business, this matter should be remanded to the Director for further proceedings on this issue." We disagree.

We determined in our prior decision that the Petitioner did not qualify as a new office when it filed the present petition on April 11, 2017. On motion, the Petitioner has the burden of proof to establish that our 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 are not required to remand the matter when the Petitioner has not met its burden of proof. The Petitioner states on motion that as of April 13, 2016, it "had only performed 3 small sporadic cleaning jobs totaling $540.00 in revenue" and that it had not yet begun the "regular, systematic, and continuous provision of goods and/or services" pursuant to the definition 8 C.F.R. § 214.2(l)(1)(ii)(H). However, it does not address on motion other potential evidence of business activity, such as thousands of dollars deposited into its bank account from February through April of 2016. Tax documents show payments to two independent contractors in 2016, but the record does not contain payroll records showing whether those payments were made before or after April 2016.

Notwithstanding the above assertions, the Petitioner initially sought classification as a new office for one year beginning in April 2016. The regulations presume that a petitioner is ready to commence business activity upon approval of the new office petition and the beneficiary's assumption of L-1 status. To allow multiple years of new office status because the business is not operationally or commercially viable would incentivize premature or frivolous filings.

For the above reasons, the Petitioner did not establish that it qualified as a new office when it filed the present petition in April 2017. The Petitioner's second L-1A nonimmigrant petition for a new office remains denied.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for dismissal of its appeal. The motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.