U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8846249

Date: AUG. 20, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a sign company, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] 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, as required, that the new office had developed to an extent that it was able to support a managerial and executive position. We dismissed the Petitioner's appeal from the Director's decision. The Petitioner then filed a motion to reopen, which we dismissed as untimely. The Petitioner has now filed a motion to reconsider, asserting that the prior motion was timely filed. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the latest motion.

I. MOTION REQUIREMENTS

A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial 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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from April 17, 2017, until April 16, 2018. 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.

II. MOTION TO RECONSIDER

We dismissed the Petitioner's appeal on March 21, 2019, and advised the Petitioner that any motion on that decision must be received within 33 days.[2] The Petitioner mailed a motion to reopen on April 19, 2019, to the California Service Center, which received the motion on April 22nd. In his latest motion, the Petitioner states that the postal records show that he filed a timely motion to reopen.

The instructions to Form I-290B, Notice of Appeal or Motion, include this instruction: "Use the chart at www.uscis.gov/i-290b-addresses to determine the correct filing address for your appeal or motion. Form I-290B is not considered received by USCIS unless you file it at the proper location." The chart also includes this instruction for motions on decisions by the Administrative Appeals Office:

> Send your form to…
>
> The USCIS office that made the original unfavorable decision on your case. Use the information in sections above to determine which address to send your Form I-290B to.
>
> Example: The USCIS Miami Field Office denied your Form I-601. You filed an appeal with the AAO, but AAO dismisses the appeal. You want to file a motion asking that AAO reconsider its dismissal. You should file your motion with the Chicago Lockbox because the Miami Field Office issued the original denial on your case.

Had the Petitioner followed the complete instructions on the chart, it would have sent the motion to the Phoenix, Arizona, lockbox. Instead, the Petitioner erroneously submitted the motion to the California Service Center, which led to a delay in the receipt of the motion at the proper location. Fee issues also appear to have played a part in the delay, but the nature of those issues is not entirely evident from the available record. As a result of the various delays, the motion was not received until August 8, 2019.

The Petitioner, in his latest motion, has not shown that the prior motion was timely filed in accordance with the form instructions. Therefore, we will dismiss the motion to reconsider.

III. PRIOR MOTION TO REOPEN

Although not at issue in this latest filing, we will briefly discuss the evidence and arguments submitted with the earlier motion, to explain why proper and timely filing of that motion would not have resulted in the approval of the petition.

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).

[2] See 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b).

The Director denied the new office extension petition for three reasons, and in our appellate decision, we agreed with each of those reasons. More specifically, the Director determined that the Petitioner had not shown that: (1) it was doing business, defined as the regular, systematic, and continuous provision of goods, services, or both;[3] (2) the new office was financially able to support the Beneficiary's intended position; and (3) the Beneficiary's position was primarily that of a manager or executive.

These conclusions derived largely from the Petitioner's low volume of business activity. In its original business plan, the Petitioner anticipated that, during its first year of operations, the company would hire five subordinate employees and accumulate $556,200 in sales. The Director relied on these forecasts when approving the new office petition; a key purpose of the extension petition is to show that the new office had actually met the expectations that justified the approval of the original petition. At the time the Petitioner filed the extension petition, the Petitioner had no employees other than the Beneficiary, and had made only $20,576 in sales.

In its motion to reopen, the Petitioner asserted that the business grew more slowly than anticipated, both because of a delay in Georgia's issuance of a state tax identification number for the company, and because "businesses are generally slow" during "the fall season and the winter season."

The motion did not include evidence to show when the Petitioner applied for its Georgia state tax ID number or to establish that the process took substantially longer than usual such that it delayed the opening of the Petitioner's business by several months. The Petitioner did not submit statistical evidence to show that sales of its products decline in the fall and winter, or that it built any such fluctuations into its sales projections. Furthermore, every year includes a "fall season and . . . winter season," and therefore the occurrence of those seasons during the Petitioner's first year of operations does not explain why the Petitioner's actual sales were below 4% of the projected figure upon which the Director relied when the petition was approved.

The Petitioner submitted sales and banking records from late 2018 and 2019 to show that business activity increased after the one-year new office period ended. The regulations do not provide for prolonging the one-year new office period, but even if they did, the first full year of sales does not approach the Petitioner's original prediction. Between July 1, 2017 and June 30, 2018, the Petitioner issued 54 invoices, for a total gross income of totaling $46,501.75. As of March 30, 2019 (the last date on the transaction list), the Petitioner's total gross sales amounted to $223,372.54. Thus, it took 21 months of operation for the Petitioner to reach 40% of what it expected to earn in its first 12 months. Seasonal sales fluctuations and the claimed delay in receiving its Georgia state tax ID number do not account for the company's inability to meet its first-year projections.

The Petitioner's new office must meet all requirements for extension at the end of the one-year new office period. See 8 C.F.R. § 214.2(l)(14)(ii). If the Petitioner did not meet those requirements at that time, then its inability to do so is an inherently disqualifying factor that the Petitioner cannot overcome by purporting to meet those requirements several months later.

[3] See 8 C.F.R. § 214.2(l)(1)(ii)(H).

For the above reasons, the evidence submitted with the prior motion to reopen would not have resulted in approval of the petition.

IV. CONCLUSION

The Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for dismissal of its prior motion to reopen. The motion to reconsider will therefore be denied.

ORDER: The motion to reconsider is dismissed.