U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-S-, LLC

DATE: AUG. 23, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, which states that it provides management services to hotels and also oversees construction projects, seeks to continue the Beneficiary's temporary employment as its 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. The Petitioner appealed that decision to the Administrative Appeals Office (AAO), and we summarily dismissed the appeal.

The matter is now before us on a motion to reconsider. On motion, the Petitioner asserts that we did not consider a timely appellate brief (resubmitted on motion).

We will deny the motion.

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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

When the Petitioner filed its appeal, there was no brief, evidence, or substantive statement setting forth the basis for the appeal. Instead, the Petitioner checked a box on the appeal form, stating that its "brief and/or additional evidence will be submitted *to the AAO* within 30 calendar days of filing the appeal" (emphasis added). The instructions to Form I-290B, Notice of Appeal or Motion, state:

[1] We note that, on Form I-290B, Notice of Appeal or Motion, the Petitioner identified itself as [redacted]. Filing documents in the record confirm that the Petitioner is a limited liability company, not a corporation.

"Any brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted *directly to the AAO*" (emphasis added), followed by a link to the AAO's mailing address.

We did not receive any brief or additional evidence within the requested 30 days. Therefore, we summarily dismissed the appeal, as required by the regulation at 8 C.F.R. § 103.3(a)(1)(v), which states that we "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On motion, the Petitioner asserts that it did submit a timely brief, and therefore our finding to the contrary was an error of fact. The Petitioner submits a copy of an appellate brief and a copy of a delivery receipt.

The delivery receipt shows that the Petitioner did not send the brief directly to the AAO as required. Instead, the brief and the receipt show that the recipient was a U.S. Citizenship and Immigration Services location in Phoenix, Arizona.

All benefit requests must be filed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(6). The Petitioner did not file the appellate brief in accordance with the instructions provided. To date, the copy of the brief sent to Phoenix still has not found its way to the record of proceedings.

There was no appellate brief in the record at the time of filing, and therefore we did not err when we stated "we have not received anything further from the Petitioner to date." The decision was correct based on the evidence in the record of proceedings at the time of the decision. Therefore, we must deny the motion, because it does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is denied.

Cite as *Matter of V-S-, LLC*, ID# 1585634 (AAO Aug. 23, 2018)