U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12688202

Date: DEC. 1, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to continue employing the Beneficiary as its president under the L-1A nonimmigrant visa classification for managers and executives. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, and we dismissed the Petitioner's appeal. *See In Re: 7030295* (AAO Jan. 8, 2020). Most recently, we summarily dismissed the company's following combined motions to reopen and reconsider as untimely.

The matter is before us again on the Petitioner's motion to reconsider. The Petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. MOTION CRITERIA

A motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at that time. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the requested benefit.

II. THE UNTIMELY MOTIONS

If USCIS serves decisions by mail, petitioners seeking to reopen and/or reconsider the matters must generally file motions within 33 days of the respective decisions. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). USCIS must dismiss motions that do not meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

Here, the Petitioner's combined motions to reopen and reconsider challenged our appellate decision of January 8, 2020, which we mailed to the company. USCIS received the Petitioner's combined motions on February 11, 2020, 34 days after the decision's issuance. As the motions were one day late, we dismissed them as untimely.

In this motion, the Petitioner notes that we have discretion to excuse the untimely filing of a motion to reopen "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). The Petitioner asserts that its motion to reopen met the requirements of this provision and that the company deserves an exercise of favorable discretion.

The Petitioner states that counsel timely prepared the motion to reopen on the company's behalf and that an employee of counsel left work to bring the motion to a delivery service on Friday, February 7, 2020. The Petitioner states that, on the way to the delivery service's office, the employee "received an unwelcoming phone call alerting her of a family emergency involving her children's wellbeing and was forced to rush home." Without telling her employer, the employee did not drop off the motion to the delivery service that day. Rather, the employee reportedly delivered the motion to the service the next day and told a service manager that USCIS must receive the motion by Monday, February 10, 2020, 33 days after the decision. The employee allegedly paid an additional fee for "priority overnight" mailing, and the manager reportedly indicated that the service would timely deliver the motion.

The Petitioner states that it did not learn of the motion's delayed filing until the company received our decision. Eventually, a delivery service employee reportedly told the Petitioner that the service did not ship the motion until Monday, February 10, 2020, and that the motion arrived one day late.[1] The Petitioner states:

> The ramifications of this employee emergency and delay by [the delivery service] caused Petitioner and Beneficiary to face unfair prejudice. Petitioner did not get a chance to explain their case properly to AAO due to no fault of theirs. This delay was beyond the control of the petitioner.

The Petitioner submits copies of shipment documentation and an email exchange between counsel and the employee who purportedly delivered the motion to the delivery service. As previously indicated, however, the Petitioner's motion to reconsider must be based on "evidence of record at the time of the initial decision." 8 C.F.R. § 103.5(a)(3). We therefore cannot consider the materials submitted on motion.

Even if we could consider the additional materials, they would not sufficiently corroborate the employee's alleged "emergency" and the reasonableness of the motion's delay. The shipment documentation shows that the delivery service shipped the motion on Monday, February 10, 2020, and that USCIS received it on Tuesday, February 11, 2020. The email messages show that, at about 4 PM on Friday, February 7, 2020, counsel informed an unidentified person of a filing's urgency and that, about three hours later, an unidentified person responded that he or she was "[j]ust wrapping it up" and was "sending it in time to reach on Monday for sure."[2] The record lacks supporting evidence of "a family emergency" regarding the claimed employee's children or the delivery service's purported receipt of the motion on Saturday, February 8, 2020. Without independent, objective evidence of the

[1] In response to the extraordinary circumstances of the COVID-19 pandemic, USCIS relaxed certain filing deadlines. *See, e.g.,* USCIS Extends Flexibility for Responding to Agency Requests, https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1. This policy, however, did not begin until March 2020, after the Petitioner's filing of its motion to reopen.

[2] The Petitioner blacked out the name(s) and email address(es) of the recipient and responder to counsel's email.

nature of the "emergency" or the delivery service's receipt of the motion on the next day, the record does not demonstrate that the delay was reasonable and beyond the Petitioner's control.

The Petitioner states that "we do not have access to the employee's said crisis records since the employee is no longer employed [by counsel's] office." But that does not explain why the Petitioner does not identify the purported employee and submit corroborating evidence of counsel's employment of her, as well as a statement from the employee or the delivery service. The record also lacks evidence of any attempts to obtain a statement. The record therefore would not support the Petitioner's claim.

For the foregoing reasons, the Petitioner has not demonstrated that the delay in filing its motion to reopen was reasonable and beyond the company's control. We therefore cannot excuse the motion's late filing.

The Petitioner also requests that we reopen and reconsider the motion to reopen on our own motion. *See* 8 C.F.R. § 103.5(a)(5) (allowing USCIS officers to reopen or reconsider their decisions). The record, however, does not establish our improper dismissal of the Petitioner's motion to reopen as untimely. We therefore decline to reopen the matter.

III. CONCLUSION

The Petitioner has not demonstrated that the delayed filing of its prior motion to reopen was reasonable and beyond the company's control. Also, because the record does not establish our improper dismissal of the motion as untimely, we decline to reopen the matter on our own motion.

ORDER: The motion to reconsider is dismissed.