U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35228048

Date: DEC. 02, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a company owning and operating a free-range chicken farm, seeks to extend the temporary employment of the Beneficiary as its chief executive officer 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 the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in the United States in this same capacity. The Petitioner then filed an appeal that we dismissed.[1] 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 motions.

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).

In our appeal decision, we determined the Petitioner did not sufficiently establish that the Beneficiary would be employed in the United States in a managerial capacity under an extended petition. We determined that the Beneficiary's duty description and provided supporting documentation indicated that he would likely have been primarily engaged in non-qualifying operational duties alongside the

[1] In dismissing the appeal, we concluded the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity under an extended petition, and since this issue was dispositive, we reserved the other ground for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

farm's operational employees. We further indicated that the Petitioner provided little evidence to substantiate that he was primarily delegating non-qualifying operational tasks to his claimed subordinates. We also stated that the Petitioner submitted little supporting documentation to corroborate his primary performance of qualifying managerial level tasks, including supporting evidence to demonstrate its regular engagement of an asserted independent expert and contractors, or other employees, to relieve the Beneficiary from performing the non-qualifying tasks of operating the farm. Lastly, we reasoned that the Petitioner did not submit information or evidence reflecting its income, salaries, or financial status, such as tax documentation, audited financial statements, or any other similar supporting documentation to substantiate that it was sufficiently operating to support the Beneficiary in a qualifying managerial capacity as of the date the petition was filed on October 27, 2023.

In support of the motion to reopen, the Petitioner submits additional evidence it asserts reflects the Beneficiary working with a marketing company, communications he had with an "expert" related to the well-being of the Petitioner's livestock, and him formulating policies and procedures for the farm manager. The Petitioner further provided text messages between the Beneficiary and the farm manager regarding animal welfare techniques, as well as documentation showing his importation of materials and machines for future farming operations.

The newly provided evidence from the Petitioner does not sufficiently demonstrate that the Beneficiary would have been primarily relieved from performing non-qualifying operational tasks when the petition was filed. As we indicated in our prior decision, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support a managerial or executive position. There is no provision in the regulations allowing for an extension of this one-year period. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

On motion, the Petitioner provided few examples of his performance of qualifying managerial or executive-level duties, submitting one letter from a marketing specialist and text messages between the Beneficiary and the asserted farm manager. However, this evidence is insufficient to overcome the documentation we discussed in our prior decision reflecting the Beneficiary's engagement in nearly all the operational aspects of the business. First, the letter from the marketing contractor to the Beneficiary is dated in June 2024, more than eight months after the petition was filed in October 2023. Further, the text messages provided on appeal are undated and appear to reflect the Beneficiary's continued engagement in all the non-qualifying aspects of the business, rather than his primary performance of qualifying managerial or executive-level duties. The Petitioner also submitted a schedule C "profit and loss from business" included with his IRS Form 1040, U.S. Individual Income Tax Return indicating that the business only earned approximately $70,000 as of the end of that year. This leaves substantial question as to whether it was sufficiently operational to support the Beneficiary in a qualifying managerial or executive position at this time.

In fact, the Petitioner provided internal 2024 payroll documentation showing that it employed only the Beneficiary and the asserted farm manager up until June 2024, well after the petition was filed in October 2023. This evidence is contrary to the Petitioner's prior assertions that it was employing the farm manager and subordinate farm workers when the petition was filed. Therefore, the new evidence provided on appeal only further supports a conclusion that the Petitioner was not sufficiently operational to support the Beneficiary in a qualifying managerial or executive capacity when the petition was filed in October 2023, rather than overcoming the prior conclusions set forth in our previous decision. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior appeal. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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). 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.

On motion, the Petitioner contends that we were incorrect to conclude that the Beneficiary's duties were primarily operational in nature, asserting that he would devote 50% of his time to "managing the company," handling matters related to policy formation and "critical components" for its operational employees to carry out. The Petitioner emphasizes that the Beneficiary would be primarily tasked with developing livestock management plans, proper recordkeeping procedures, reviewing financial reports, hiring a marketing firm for marketing and social media, and developing human resources policies and practices. The Petitioner asserts that we incorrectly concluded that he would be 100% focused on non-qualifying tasks and reminds us they need only demonstrate that he was primarily performing managerial or executive-level tasks to qualify. The Petitioner also states that we erred in not considering that the Beneficiary arrived in the United States in November 2022, giving him just over six months to launch the new venture, rather than the one year reflected in the new office petition approval from June 6, 2022, to June 5, 2023. The Petitioner asserts the Beneficiary was "unnecessarily shortchanged," and that the petition should have been approved from November 2022 to November 2023. The Petitioner also asserts that the Beneficiary would qualify as a function manager and an executive under an extended petition.

Upon review, we conclude that we did not err in determining that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial capacity when the petition was filed. As we noted in prior decision, we acknowledge that the Beneficiary's delay entering the United States was likely difficult. However, the supporting documentation reflected that the Beneficiary was more likely than not directly involved in nearly all the operational aspects of the business when the petition was filed, and at minimum, this evidence showed him working alongside operational employees within the business to perform ordinary non-qualifying operational tasks, such as caring for and moving livestock and handling all the operational aspects of the farm. In contrast, the Petitioner provided little supporting evidence to corroborate his primary focus on managerial or executive level tasks, including his claimed development livestock management plans, hiring of a marketing firm for marketing and

social media, and development of human resources policies and practices. In fact, as we have discussed in this decision, the evidence the Petitioner submitted on motion leaves only further question as to whether it was sufficiently operational to support the Beneficiary in a managerial or executive capacity. For instance, the documentation provided on motion shows that it only earned $70,000 by the end of the 2023 and that it did not employ subordinate farm workers to relieve the Beneficiary and his asserted farm manager from non-qualifying tasks until June 2024, approximately eight months after the date the petition was filed.

The Petitioner also asserts for the first time on motion that we should now consider that the Beneficiary would qualify as an executive under an extended petition. However, when dismissing an appeal, we did not address issues that were not raised with specificity on appeal, and those not raised are deemed to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The courts' view of issue waiver varies from circuit to circuit. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (finding that an issue referred to in an affected party's statement of the case but not discussed in the body of the brief is deemed waived); *but see Hoxha v. Holder*, 559 F.3d 157, 163 (3d Cir. 2009) (issue raised in notice of appeal form is not waived, despite failure to address in the brief).

Regardless, for reasons similar to those previously discussed, the Petitioner did not establish that the Beneficiary would have been employed in an executive capacity under an extended petition. The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

As we have indicated here, and our prior decision, the Petitioner submitted substantial supporting evidence reflecting his likely engagement in nearly all the operational aspects of the farm when the petition was filed in October 2023. The Petitioner provides little on motion to overcome this conclusion. Indeed, it provides supporting documentation only leaving further question as to whether its operations were sufficient to support the Beneficiary in an executive capacity where he must be primarily relieved from performing non-qualifying operational tasks and mainly focused on directing the management and setting the goals and policies of the Petitioner. However, the Petitioner submitted little supporting documentation to substantiate the Beneficiary's performance of executive-level tasks either when the petition was filed or thereafter. As such, the Petitioner has not established that the Beneficiary would have been employed in an executive capacity under an extended petition. For the foregoing reasons, 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, the motion to reconsider will also be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.