U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6578165

Date: DEC. 11, 2019

Appeal of California Service Center Decision

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

The Petitioner intends to operate a furniture upholstery, manufacturing, and repair company. It seeks to temporarily employ the Beneficiary as the general manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. 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 concluding that the Petitioner did not establish, as required, that: (1) it had secured sufficient physical premises at the time this petition was filed; (2) the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity; and (3) the Beneficiary would be employed in managerial or executive capacity in the proposed position with the U.S. entity. The Petitioner subsequently filed a motion to reconsider, which the Director dismissed. The matter is now before us on appeal.

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 *de novo* review, we find that the Director did not properly assess the previously submitted evidence and therefore incorrectly dismissed the motion to reconsider.

A motion to reconsider must establish that the prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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 may be granted if it satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The issue before us is whether the Director's decision to dismiss the Petitioner's motion to reconsider was correct. Upon review of the record, we find that the Director did not adequately consider the brief

[1] The term "new office" refers to 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). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

submitted in support of the motion to reconsider where the Petitioner correctly pointed to previously submitted evidence that contradicted the Director's findings.

In light of the arguments made in the Petitioner's support brief, we find that the Petitioner adequately articulated reasons for reconsideration, thereby warranting that the motion to reconsider be granted so that a new decision can be made based on the merits of the submitted evidence.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.