U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12774260

DATE: DEC. 14, 2020

Motion on Administrative Appeals Office Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, a trucking company that also owns a truck yard and real estate properties, seeks to continue the Beneficiary's temporary employment as chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. 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 on the ground that the record did not establish that the Petitioner would employ the Beneficiary in a managerial or executive capacity under the extended petition. The Petitioner filed an appeal claiming that the Beneficiary would be employed in a managerial capacity. We dismissed the appeal for failure to establish that the Beneficiary would be employed in a managerial capacity, and on the additional ground that the Petitioner did not show it was doing business at the time the extension petition was filed (in February 2016).

The Petitioner filed a motion to reconsider, which we dismissed. In our decision we concluded that the Petitioner did not claim or provide evidence showing that we incorrectly applied the law or USCIS policy in dismissing the appeal, and also pointed out that the Petitioner did not address or dispute our finding that it was not doing business at the time the extension petition was filed. We informed the Petitioner that this omission, by itself, was a sufficient basis to deny the motion.

The Petitioner filed a second motion to reconsider, which we dismissed on the ground that it was not timely filed. The Petitioner filed a third motion to reconsider, contending that its prior motion was indeed timely filed. We dismissed the motion, determining that the evidence of record did not support the Petitioner's claim that its second motion to reconsider was timely filed. In our decision we also stated that even if the prior motion had been timely filed, it would have been dismissed because the motion did not address our previous finding that the record lacked sufficient evidence to show that the Petitioner is doing business. We indicated that the Petitioner's failure to address this finding constituted an abandonment of the claim that it is doing business, which made it unnecessary for us to analyze any other ground for dismissal.

The matter is now before us on a fourth motion to reconsider. As provided in the regulation at 8 C.F.R. § 103.5(a)(3), a motion to reconsider must establish that our previous decision was based on

an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision.[1] We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

With its latest motion the Petitioner submits a brief contending that its second motion was timely filed, contrary to our finding that it was untimely filed, along with documentation (largely duplicative of previously submitted evidence) which assertedly shows that the second motion was mailed with a check for the filing fee and timely received by U.S. Citizenship and Immigration Services (USCIS). The Petitioner also describes some of the Beneficiary's alleged business activities on behalf of the U.S. company, without specifying what ground(s) of dismissal in our previous decisions these alleged activities are meant to address. The Petitioner submits copies of some financial documents for the years 2017, 2018, and 2019, not previously in the record, along with copies of some previously submitted financial documents and business records.

The basis of our earlier finding that the Petitioner's second motion was not timely filed was that the original submission was not accompanied by the filing fee, was therefore rejected, and the resubmitted motion with the filing fee was received two days after the 33-day filing period had expired. While the Petitioner resubmits a copy of the check it submitted for the filing fee, it has not addressed the reason we found that check to be unpersuasive evidence that the motion was timely filed – specifically, the lack of corroborative evidence that the check was actually submitted to USCIS with the Petitioner's initial filing attempt. Thus, the Petitioner has not provided any rationale for us to withdraw our previous finding that the second motion was not timely filed, nor shown that our finding was based on an incorrect application of law or USCIS policy.

Nor does the Petitioner's current motion overcome our previous findings that the record does not establish that the Petitioner was doing business at the time the extension petition was filed or that the Beneficiary would be employed in a managerial capacity under the extended petition. The Petitioner has not explained how the business activities allegedly performed by the Beneficiary meet all of the elements of "managerial capacity" as discussed in our earlier decisions, or how the Petitioner at the time the extension petition was filed in February 2016 met all of the elements of "doing business" which were also discussed in our earlier decisions. The Petitioner has not shown that our prior decisions were based on any incorrect application of law or USCIS policy based on the evidence of record at the time of the decision.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not shown proper cause for reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.

[1] Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. See INS v. Doherty, 502 U.S. 314, 323 (1992) (citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." See INS v. Abudu, 485 U.S. at 110.