U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19635454

Date: DEC. 16, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, which is self-described as a trucking business, seeks to continue the Beneficiary's temporary employment as its chief executive officer 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 Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity under the extended petition. We dismissed the Petitioner's subsequent appeal of that decision on the same ground and on the additional ground that the Petitioner did not establish, as required, that it was doing business at the time it filed this petition in February 2016. The Petitioner has since filed five motions to reconsider, and we have dismissed each motion. The matter is now before us on a sixth motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 27, 2015, until February 27, 2016. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As noted, the Director denied the petition based on a determination that the Petitioner did not establish that it would employ the Beneficiary in a managerial capacity under the extended petition. We dismissed the appeal after reaching the same conclusion. Based on our *de novo* review of the record, we also identified a second ground of ineligibility, concluding that the Petitioner did not establish that it was "doing business," as defined at 8 C.F.R. § 214.2(l)(1)(ii)(H), at the time it filed this petition in February 2016. We have dismissed the Petitioner's five subsequent motions to reconsider. Our prior decisions are part of the record of proceedings and are incorporated by reference here.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). In this case, the prior decision at issue is our decision dated June 14, 2021, in which we dismissed the Petitioner's fifth motion to reconsider.

The current motion to reconsider consists of the Petitioner's brief and copies of financial statements for the petitioning company and for other companies in which it has invested, which were previously submitted and discussed in our prior decisions. Although the Petitioner's brief mentions the date of our most recent decision, it makes no specific reference to the reasons we dismissed its fifth motion. Specifically, the brief does not state the reasons the Petitioner is requesting reconsideration of that decision and does not articulate why the Petitioner believes that our immediate prior decision was based on an incorrect application of law or policy.

Rather, the Petitioner generally maintains that the evidence in the record is sufficient to establish that the Beneficiary would be employed in a managerial capacity and that the company was doing business as of February 2016, and requests reconsideration of our initial decision dismissing the appeal. The Petitioner's brief does not address how we incorrectly applied the law or USCIS policy by dismissing its fifth motion to reconsider, and much of the brief is repeated nearly verbatim from a brief submitted in support of a prior motion.

The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

Further, the Petitioner submitted the same supplemental financial documentation with its two most recent prior motions and the evidence is therefore already part of the record. We have previously addressed the Petitioner's financial documents and balance sheets for the years 2015 and 2016 and why this evidence is insufficient to establish that the petitioning company was doing business as defined in the regulations. The Petitioner's resubmission of the same balance sheets in subsequent motions is insufficient to meet its burden to establish how we incorrectly applied the law or USCIS policy in concluding that the company was not doing business at the time of filing in February 2016. Further, submission

In sum, although the Petitioner has submitted a brief and copies of previously submitted evidence in support of the current motion, it does not contend that we misapplied the law or USCIS policy in dismissing the previous motion to reconsider. The Petitioner's brief does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions.

As such, the motion does not meet all the requirements of a motion to reconsider, and 8 C.F.R. § 103.5(a)(4) requires dismissal of the motion.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for dismissal of its prior motion to reconsider.

ORDER: The motion to reconsider is dismissed.