U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10860470

Date: DEC. 30, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a "general manager" of its new office[1] 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 Director of the California Service Center denied the petition and a subsequent motion, concluding that the record did not establish that (1) the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition; (2) the new office would be able to support a managerial or executive position within one year of approval of the petition; and (3) the Beneficiary has been employed abroad in a managerial or executive capacity. The Petitioner then filed an appeal which we dismissed. We also included an additional ground for dismissal, that is the record did not establish a qualifying relationship between the Petitioner and the foreign entity. The matter is now before us on a motion to reopen and motion to reconsider.[2]

On motion, the Petitioner contends our previous decision was in error. Upon review, we will dismiss the motion to reopen and the motion reconsider.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision on an incorrect

[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.

[2] The Petitioner checks the box on the Form I-290B, Notice of Appeal of Motion, indicating that it was filing only a motion to reopen. The Petitioner's brief is labeled a motion to reopen and reconsider. Despite the ambiguity, we will consider both motions.

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

II. ANALYSIS

A. Motion to Reopen

In support of this motion, the Petitioner reiterates contentions provided in support of the previous appeal and submits a "Tax Clearance Letter For Reinstatement" issued by the Texas Comptroller of Public Accounts dated February 24, 2020. The record on motion contains no other new documentary evidence.

The Petitioner submits this document to resolve our observation in the previous decision that the Petitioner's registration in the State of Texas appeared to have ended as of January 13, 2020, according to the Texas Comptroller of Public Accounts, https://mycpa.cpa.state.tx.us/coa/coaSearchBtn. We reviewed the new letter and note that although the letter indicates the Petitioner is eligible for reinstatement it also required the Petitioner to affirmatively file for reinstatement by May 15, 2021. The Texas Comptroller of Public Accounts database continues to show the Petitioner's corporate status as "franchise tax status has been involuntarily ended." Texas Comptroller of Public Accounts, https://mycpa.cpa.state.tx.us/coa/coaSearchBtn (last visited Dec. 2, 2020). Thus, as of this date, the Petitioner although eligible has not filed for reinstatement. Although we are not making an adverse finding on this issue, we continue to question the Petitioner's intent to do business in the future.

More importantly, the Petitioner does not address the deficiencies and inconsistencies in the record regarding the issue of the Beneficiary's one continuous year of qualifying employment abroad during the three years preceding the filing of the petition. Rather, the Petitioner reiterates that the foreign company is a family business, and that the Beneficiary while in F-1 nonimmigrant status in the United States, worked as an agent for his family researching business opportunities, property locations, demographics, and reviewing market studies. The Petitioner does not support these assertions with relevant, probative, and credible evidence. The Petitioner does not explain how these claimed tasks constitute working as a general manager[3] for the foreign entity nor does the Petitioner provide documentary evidence of these activities. The Petitioner also does not introduce evidence clarifying the inconsistencies in the record regarding its qualifying relationship with the foreign entity. The Petitioner does not state new facts supported by affidavits or documentary evidence sufficient to meet the requirements of a motion to reopen. As the record on motion does not include new, relevant evidence regarding these issues, the Petitioner has not shown proper cause to reopen this matter.

B. Motion to Reconsider

With respect to the motion to reconsider, the Petitioner asserts that the evidence it submitted is sufficient to satisfy the preponderance of evidence standard and that we did not apply this standard

[3] We also determine that these duties do not correspond to the duties the Petitioner specified were the Beneficiary's duties for the foreign entity and are insufficient to establish the essential eligibility requirement that the Beneficiary's foreign employment was in a managerial or executive capacity during the required time periods. Section 101(a)(44)(A) of the Act.

when adjudicating this matter. As stated in our prior decision we follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This standard requires that a petitioner establish that it meets *each* eligibility requirement of the benefit sought by a preponderance of the evidence. *Id.* at 375-76. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). The Petitioner does not articulate probative reasons which establish that our previous decision was based on an incorrect application of the preponderance of evidence standard in this matter.

For example, the Petitioner contends that our review of U.S. Citizenship and Immigration Services' (USCIS) records regarding the Beneficiary's nonimmigrant F-1 status is conjecture and that more likely the officer reviewing the file reviewed another person's file. The Beneficiary's interactions and claims with USCIS are a matter of USCIS record which includes pictures of the Beneficiary that match his passport and visa pictures in the current record. The Petitioner, on whom the burden of proof rests,[4] does not offer evidence or credible argument establishing that the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of this petition on February 26, 2018, rather than attending school in the United States during the pertinent time period. The Petitioner argues that there is no case law or regulation cited that "states the Beneficiary is not considered an employee of the foreign company while he was serving as an [a]gent on behalf of the foreign company while he was in the U.S." However, contrary to the Petitioner's argument, we cited current USCIS policy which establishes that for the Beneficiary's work for the foreign entity to be qualifying, the work must have occurred outside of the United States.[5] As previously determined, the Petitioner does not include probative, credible evidence that the Beneficiary in this matter had at least one year of full-time continuous employment with a qualifying entity abroad in the three years preceding the filing of the petition.[6] The Petitioner does not state any reason for reconsideration on the issue of the Petitioner's failure to establish a qualifying relationship with the foreign entity. The Petitioner has not established 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 proceeding at the time of the decision.

For the reasons listed above the Petitioner has not shown proper cause to reconsider the previous decision.

III. CONCLUSION

The Petitioner has not shown proper cause to reopen this matter and has not shown proper cause to reconsider the previous decision. The Petitioner has not established the length of the Beneficiary's

[4] As in all visa petition proceedings, the burden of proof rests with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361.
[5] USCIS Policy Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* 4 (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda ("*L-1 1-in-3 Policy Memo*").
[6] As discussed above, the Petitioner does not address the numerous deficiencies and inconsistencies in the record detailed in our previous decisions regarding the Beneficiary's claimed one-year full-time continuous employment with a qualifying entity abroad in the three years preceding the filing of the petition. The Petitioner does not provide new, relevant documentary evidence resolving the inconsistencies and establishing any of its purported claims regarding this issue.

qualifying employment abroad and has not established its qualifying relationship with the Beneficiary's claimed foreign employer. As we concluded in our previous decision, these issues are dispositive in this case, thus, we need not reach the other two issues identified by the Director in this matter and therefore reserve them.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.