U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7475793

Date: FEB. 12, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a real estate and export business, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) 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 Vermont Service Center denied the petition based on three grounds. We dismissed the appeal and denied two subsequent motions to reopen and reconsider. In our latest decision, we addressed three issues. First, we found that the Petitioner broadly referred to "the courts," but did not cite specific case law to support its assertions on the doing business issue. Likewise, we found that the Petitioner did not support its interpretation of the term "abroad" within the context of the Beneficiary's foreign employment and that the Petitioner's interpretation was inconsistent with the regulations. Lastly, we addressed the Beneficiary's proposed U.S. employment and found that the Petitioner's arguments were inconsistent with regulatory provisions that require each petitioner to provide a detailed description of the services a beneficiary would provide under an approved petition. 8 C.F.R. § 214.2(l)(3)(ii).

On motion, the Petitioner disputes the denial of the petition and contends that we "misapplied the regulations." The Petitioner reiterates that the purpose of the filing was to correct an attorney error that resulted in the petition being "mistakenly categorized" as a petition for consular processing rather than one for a change of status.

Upon review, we will deny the combined motion to reopen and motion to reconsider.

I. MOTION REQUIREMENTS

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 our 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The primary issue to be addressed in this decision is whether the Petitioner has offered new relevant facts supported by credible evidence or made arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy with respect to the facts of this case. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, June 2017) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Here, the subject of the prior decision was our denial of the Petitioner's second motion to reopen and reconsider. As such, the purpose of this decision is to examine any new facts and supporting evidence that pertain to the denial of that motion and to consider arguments establishing that our denial of the motion was based on a misapplication of law or USCIS policy.

A. Motion to Reopen

In denying the prior motion to reopen, we determined that the Petitioner did not offer new facts or provide evidence in support of new facts. Here again, although the Petitioner provides a legal brief in support of this motion, it does not offer new facts or supporting evidence to establish that we incorrectly denied the prior motion based on the record as constituted when that motion was adjudicated. Therefore, the Petitioner has not shown proper cause for reopening.

B. Motion to Reconsider

In support of the motion to reconsider, the Petitioner first addresses the Beneficiary's proposed U.S. employment, contending that "the Decision erred in its analysis by assuming that CEOs have specific tasks everyday [*sic*]." Then, despite claiming that "[n]ot a single CEO can precisely tell what he does specifically in a typical day," the Petitioner argues that it "provided clear and adequate descriptions of the CEO's job duties" and asserts that we "failed to provide a legal standard of what kind of job descriptions [*sic*] is not overly broad." As we noted in our prior decision, however, the Petitioner's arguments are inconsistent with certain provisions in the regulations, which expressly state that the Petitioner "shall" submit evidence, which is to include "a detailed description of the services to be performed." 8 C.F.R. § 214.2(l)(3)(ii). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The Petitioner has not addressed this evidentiary deficiency nor cited to case law or USCIS policy to support its restated arguments.

Next, the Petitioner addresses the issue of doing business, reaching back to the merits of our doing business finding in our first motion. However, as noted above, the purpose of this decision is to determine whether we misapplied the law or USCIS policy when we denied the Petitioner's *latest* motion. Here, the Petitioner argues that we "crossed the line to second-guess the Petitioner's business"

and arbitrarily made an adverse finding about the Petitioner's business. To support its argument, the Petitioner cites a Supreme Court case where it was determined that a government agency acted arbitrarily and capriciously when it "failed to present an adequate basis and explanation" for revoking a requirement in the motor vehicle safety standard. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983). However, the Petitioner did not establish that the Court's ruling is applicable to the facts and circumstances of this case, given that we provided the Petitioner with an adequate explanation and pointed to evidence showing that the Petitioner had been doing business for at least one year prior to filing the petition and therefor did not qualify as a new office. *See* 8 C.F.R. § 214.2(l)(1)(2)(F) (for definition of "new office"). The Petitioner does not cite to any case law or submit evidence that addresses this finding or establishes that the finding was legally unsound or that it demonstrated a misapplication of the law or USCIS policy. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Finally, the Petitioner addresses the issue of the Beneficiary's period of foreign employment, which we found the Beneficiary interrupted because of his prolonged stay in the United States. The Petitioner does not specifically address that finding and instead offers a confusing analysis asserting that we "misapplied the regulations by using the section of 'brief trips' to apply on [*sic*] the Beneficiary's prolonged [732-day] stay in the United States." Although the Petitioner readily admits that the Beneficiary's stay in the United States was "by no means" a "brief trip," it seemingly argues that because the regulations do not expressly discuss the ramifications of a beneficiary's prolonged absence from their period of foreign employment, the Beneficiary's 732-day stay does not disqualify him from demonstrating eligibility. However, the Petitioner does not provide evidence to support its reasoning, which is inconsistent with the regulations. Contrary to the Petitioner's argument, the regulations expressly discuss only brief periods of time spent in the United States for business or pleasure for the purpose of distinguishing brief visits, which "shall not be interruptive" of a beneficiary's period of foreign employment, from prolonged visits, which would have the opposite effect. 8 C.F.R. § 214.2(l)(1)(ii)(A). In other words, the regulatory language clarifies that only brief physical absences would not be deemed as interruptive of the period of continuous foreign employment. The Beneficiary's prolonged 732-day stay in the United States, on the other hand, precludes the Petitioner from demonstrating that the Beneficiary was "employed abroad *continuously* for one year." *Id.* (Emphasis added).

In sum, while we acknowledge that the Petitioner disagrees with our denial of the motion to reconsider, it has not provided evidence establishing that the findings in our prior decision were based on an incorrect application of law or 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). Therefore, the Petitioner has not shown cause for reconsideration.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.