U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-F-, LLC

DATE: FEB. 13, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an operator of grocery stores and gas stations, seeks to temporarily employ the Beneficiary as its president 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 California Service Center denied the petition, concluding that the record did not establish, as required that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Beneficiary will be employed in the United States in a managerial or executive capacity.

The Petitioner subsequently filed a motion to reconsider. The Director denied the motion without disturbing the denial of the petition, finding that the Petitioner's submission did not meet the requirements of a motion to reconsider. The matter is now before us on appeal. Upon review, we will dismiss the appeal.[1]

Although the Petitioner's appellate brief addresses the Director's initial denial decision, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director's subsequent finding that its motion did not meet the requirements of a motion to reconsider. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us is whether the Director properly found that the motion to reconsider did not meet applicable requirements. A motion that does not meet applicable requirements must be denied. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider must establish that the underlying decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a

[1] The record reflects that the Petitioner submitted a new, properly executed Form G-28 on appeal. Therefore, we will recognize [redacted] the attorney who submitted the properly executed Form G-28, as the attorney of record in this proceeding.

pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

The Petitioner's brief in support of the motion requested reconsideration of the denial decision. However, other than a general claim that USCIS "failed to offer reasoned explanations for elements of its decision," the motion to reconsider did not contain legal arguments establishing that the denial decision was based upon an incorrect application of law or policy. In fact, much of the Petitioner's brief simply repeated large portions of the Director's denial decision without addressing the grounds for denial stated therein.

In support of the motion to reconsider, the Petitioner also submitted an article titled "What do CEOs Do? A CEO Job Description" from the website of Steve Robbins, Inc. (www.steverobbins.com), and an "Example President Job Description" from Indeed. However, USCIS does not consider new facts or evidence submitted in support of a motion to reconsider. Further, the Petitioner did not cite to any law or policy that requires USCIS to consider information found in industry publications in determining whether a given beneficiary would be employed in a managerial or executive capacity as defined under section 101(a)(44) of the Act.

As noted, the Petitioner's appeal does not address the Director's reasons for denying the motion to reconsider, and, as such, does not identify an erroneous conclusion of law or fact in the decision being appealed.

For the above reasons, we find that the Director properly concluded that the Petitioner's filing did not meet the requirements of a motion to reconsider. Because the Petitioner has established no error in the denial of the motion, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-F-, LLC*, ID# 2200042 (AAO Feb. 13, 2019)