U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30064155

Date: FEB. 14, 2024

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, an e-commerce and frame store business, seeks to temporarily employ the Beneficiary as its chief financial officer (CFO) 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 concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner appealed that decision, asserting that the Beneficiary's U.S. employment would be in an executive capacity. We dismissed the appeal, affirming the Director's determination that the record did not establish that the Beneficiary would be employed in an executive capacity. The Petitioner has filed, and we have dismissed, seven subsequent motions. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

A motion to reconsider must establish 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant motions that satisfy these regulatory requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii).

In our August 3, 2023, decision dismissing the Petitioner's seventh motion, we concluded that the Petitioner neither claimed nor established that our decision to dismiss its sixth motion was based on an incorrect application of law or USCIS policy, as required under 8 C.F.R. 103.5(a)(3). We further observed that its brief in support of the motion to reconsider repeated assertions that it had made in

support of its previous motions and which had already been addressed in our decisions dismissing those motions.

In its brief submitted in support of the current motion, the Petitioner again concedes, as in prior motions, that the late of filing of its third motion was "an unintended oversight," and requests "a one-time exception for the late submission of motions." The Petitioner also requests that we reconsider its claim that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B) and submits a separate statement in support of this claim. However, it does not contend that our decision to dismiss its seventh motion was based on an incorrect application of law or USCIS policy as required under 8 C.F.R. § 103.5(a)(3), nor does it indicate that it is submitting new facts that would warrant reopening, as required by 8 C.F.R. § 103.5(a)(2). In fact, the Petitioner does not specifically address our decision dated August 3, 3023 in its brief. Accordingly, the Petitioner has not met the requirements of a motion to reopen or reconsider.

As noted above, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. 103.5(a)(1)(i), (ii). The Petitioner's contentions in its current motion merely reargue facts and issues we have already considered in our previous decisions. *See, e.g. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Although the Petitioner requests that we consider a supplemental statement in support of its claim that the Beneficiary would be employed in an executive capacity, that issue is not before us in this eighth motion. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.