U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29827288

Date: FEB. 23, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a liquor store, seeks to temporarily employ the Beneficiary as store director of its new office 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 California Service Center denied the petition, concluding that the Petitioner had not established that: (1) the Beneficiary had been employed abroad for one continuous year during the three years preceding the filing of the petition; (2) the Beneficiary's claimed employment abroad had been in a qualifying managerial or executive capacity; and (3) the Petitioner's new office would employ the Beneficiary in the United States in a managerial or executive capacity within one year after approval of the petition. We dismissed a subsequent appeal and a combined motion to reopen and motion to reconsider. The matter is now before us on a motion to reopen.

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 motion.

Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, but U.S. Citizenship and Immigration Services (USCIS) has the discretion to excuse a reasonable delay was reasonable beyond the petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i).

The Director denied the petition in June 2019. We dismissed the Petitioner's appeal from that decision in June 2020. The Petitioner filed a timely motion to reopen, which we dismissed on November 25, 2020. Under guidance then in effect, the Petitioner had 63 calendar days to file a timely motion.[1] Therefore, the Petitioner's second motion was due no later than January 26, 2021.

USCIS received the Petitioner's filing on January 4, 2021, but rejected the filing because it did not include the correct fee. USCIS issued the rejection notice on February 9, 2021. The Petitioner remailed the motion on February 24, 2021, with the correct fee. USCIS accepted the filing on March 1, 2021.

[1] USCIS, Dep't of Homeland Security, *USCIS Extends Flexibility for Responding to Agency Requests* (Sept. 11, 2020), https://www.uscis.gov/archive/uscis-extends-flexibility-for-responding-to-agency-requests-1.

The Petitioner asserts on motion that it had relied on the August 2020 publication of a final rule that increased the filing fee for appeals and motions, effective October 2, 2020. The Petitioner acknowledges that the fee increase never went into effect due to litigation, but the Petitioner asserts that "USCIS failed to notify" the Petitioner of this development, leading the Petitioner to submit the incorrect fee with its January 2021 filing.[2]

The cover page to our November 2020 decision did not specify the filing fee for a motion or refer to the 2020 fee rule. Instead, we referred the Petitioner to a page on USCIS' website with "the latest information on fee, filing location, and other requirements." The Petitioner neither claims nor demonstrates that the website provided incorrect fee information in January 2021 when the Petitioner attempted to file the motion.

Therefore, the Petitioner has not established that its delay in filing the present motion was reasonable and beyond the Petitioner's control. For this reason, the motion does not meet applicable requirements and must be dismissed as required by 8 C.F.R. § 103.5(a)(4).

Furthermore, the motion does not otherwise meet the requirements of a motion to reopen. 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 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).

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). Therefore, we will only consider new evidence to the extent that it pertains to our November 2020 decision dismissing the Petitioner's first motion.

When we dismissed the Petitioner's appeal in June 2020, we concluded that the Petitioner had not overcome the Director's determination regarding the Beneficiary's intended U.S. employment. Because this ground is sufficient by itself to warrant denial of the petition, we reserved the other two stated grounds for denial.[3]

In our November 2020 decision, we acknowledged the Petitioner's submission of documentation relating to the Petitioner's claimed purchase of a liquor store in 2016 and the Petitioner's statement that the Beneficiary "serves as an executive" with "responsibilities "far beyond the scope of a manager or supervisor." We concluded that the Petitioner's submission did not "demonstrate that the Beneficiary's job duties with the Petitioner are primarily executive in nature, which appears to be the Petitioner's emphasis (for the first time) on motion." We further stated:

---

[2] The Petitioner also claims: "We have been waiting for this case to be rejected by USCIS, however this has not happened," and that USCIS "failed to return our case so that we may resubmit the correct fees." But the motion includes a copy of the February 2021 rejection notice, which states: "Your I-290B, fees, and any supporting documentation is being returned to you."

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

> The Petitioner has not shown how the Beneficiary's employment in the United States meets all four elements of executive capacity as defined in section 101(a)(44)(B) of the Act. Nor has the Petitioner shown that the Beneficiary's U.S. employment meets all four elements of managerial capacity as defined in section 101(a)(44)(A) of the Act. Furthermore, the Petitioner has not established that the Beneficiary will be *primarily* engaged in executive or managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. . . . Thus, the Petitioner has not shown proper cause to reopen this proceeding.

We again reserved the other two grounds for denial of the underlying petition, relating to the Beneficiary's claimed employment abroad.

The Petitioner's motion includes five exhibits. Three of those exhibits are copies of documents submitted previously, and therefore they do not introduce new facts into the proceeding. The Petitioner contends that we did not properly consider these materials when first submitted, and therefore they warrant consideration as new evidence. These documents pertain to the Beneficiary's claimed employment abroad, and as we explained in our prior decisions, we have reserved issues relating to the Beneficiary's claimed employment abroad because the issue of the Beneficiary's intended position in the United States is sufficient by itself to determine the outcome of the proceeding.

The fourth exhibit is an undated job description for the Beneficiary's intended U.S. position, which is not consistent with the job description submitted previously. Earlier, the Petitioner indicated that one of the Beneficiary's primary responsibilities would be to "meet with wholesalers, and buyers to market the clothing line [manufactured by] the parent company." The Petitioner's initial submission indicated that a key purpose of the Petitioner's new office would be to establish "a full distributorship" for the parent company's clothing products. The job description submitted on motion does not mention the clothing line at all. The submission of two conflicting job descriptions does not establish proper cause to reopen the proceeding.

The Petitioner describes the fifth motion exhibit as "[a] copy of the 2019 U.S. income tax return for the U.S. entity." That tax return, however, is for a liquor store with a different name, different address, and different federal Employer Identification Number (EIN) than the Petitioner's. The Petitioner has not established the relevance of this document, and therefore its submission does not show proper cause for reopening the proceeding.[4] The Petitioner's submission of what is clearly another business's tax return, claiming it as its own, raises very serious questions of credibility which we will revisit if the Petitioner chooses to further pursue this matter.

The Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

[4] Previously, the Petitioner submitted copies of Assumed Name Certificates filed by both businesses, each showing the same assumed name but different addresses. The filing of two separate certificates indicates that the businesses are two separate entities, an inference confirmed by the existence of two different EINs.