U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12036264

DATE: FEB. 24, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, a distribution center for watches and other merchandise, seeks to temporarily employ the Beneficiary as a logistics manager in its "new office"[1] 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 on the grounds that the Petitioner did not establish (1) that the Beneficiary was employed abroad in a managerial or executive capacity for one continuous year during the three years preceding the filing of the instant petition, as required in the regulation at 8 C.F.R. § 214.2(l)(3)(iii), and (2) that the Beneficiary would be employed in the United States in a managerial or executive capacity within one year of the petition's approval, as required in 8 C.F.R. § 214.2(l)(3)(v)(C).

We dismissed the Petitioner's appeal, affirming the Director's grounds for denial. We also identified additional issues that needed to be addressed in any future proceedings – including the location of the Beneficiary's employment abroad, whether the Beneficiary could possibly have completed one continuous year of employment abroad during the three years preceding the filing of this petition, and documentary evidence which did not appear to be authentic.

The Petitioner filed a motion to reopen, which we dismissed on the ground that while new facts were alleged in the Petitioner's brief concerning the Beneficiary's employment abroad and in the United States, they were not supported by any documentary evidence as required in 8 C.F.R. § 103.5(a)(2). We also noted that the motion did not address all of the additional issues discussed in our appellate decision and cited *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), which makes clear that the burden of proof rests with the petitioner to resolve inconsistencies in the record.

The Petitioner then filed a combined motion to reopen and motion to reconsider, supported by a brief with some legal arguments relating to the Beneficiary's foreign and U.S. employment but no new evidence. We dismissed the motions, stating that the Petitioner's latest filing did not include any new

[1] A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

facts supported by documentary evidence, as required by 8 C.F.R. § 103.5(a)(2) for a motion to reopen, and that the Petitioner did not establish that our previous decision was based on an incorrect application of law or USCIS (U.S. Citizenship and Immigration Services) policy, as required by 8 C.F.R. § 103.5(a)(3) for a motion to reconsider. We also focused on the Petitioner's continuing failure to address the additional issues identified in our appellate decision despite our indication in that decision that they must be addressed in future proceedings. Finally, we noted that when a party fails to offer an argument on an issue, that issue is abandoned, citing *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristor v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 3o, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO). We concluded, therefore, that even if the Petitioner had overcome the original bases for the denial, the current motions would be dismissed.

The matter is now before us on another motion to reconsider.[2] The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must establish that the previous decision was based on an incorrect application of law or USCIS policy. In its brief the Petitioner asserts that neither the Director in the initial decision nor this office in succeeding decisions applied the correct standard of proof, which is preponderance of the evidence in accordance with *Matter of Chawathe*, 12 I&N Dec. 369 (AAO 2010). We do not agree. Generally, when something is to be established by a preponderance of the evidence, it is sufficient that the proof establish that it is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989). The evidence in each case is judged by its probative value and credibility. Each piece of relevant evidence is examined and determinations are made as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. Truth is to be determined not by the quantity of evidence alone, but by its quality. *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989). In this case the Petitioner has been repeatedly apprised of its evidentiary shortcomings in prior decisions, and has not remedied them or provided any evidence that the appropriate standard of proof was not applied. Thus, the Petitioner has not demonstrated that our previous decision dismissing the combined motion to reopen and reconsider was based on an incorrect application of law or USCIS policy.

III. CONCLUSION

The Petitioner has not shown proper cause for reconsideration of our prior decision. The motion will be dismissed for this reason.

ORDER: The motion to reconsider is dismissed.

[2] On the Form I-290B, Notice of Appeal or Motion, the Petitioner selected the box stating "I am filing a **motion to reconsider**." While the Petitioner's supporting brief is entitled "Brief in Support of Motion to Reopen and Reconsider," the filing as a whole does not indicate an intent to include a motion to reopen since no new facts are alleged in the brief and no new documentation is submitted with the brief. The regulation at 8 C.F.R. § 103.5(a)(2) provides that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."