U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29827567

Date: FEB. 27, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a distribution center for watches and other merchandise, seeks to temporarily employ the Beneficiary as logistics manager 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. We dismissed the Petitioner's appeal and three later motions to reopen or reconsider. 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 motion.

The Director of the California Service Center denied the petition in April 2017, 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 new office will support a managerial or executive position within a year of approval of the petition.

We dismissed the Petitioner's appeal from that decision in November 2017. In that decision, we agreed with the stated grounds for denial, and also noted several additional issues in the record, concerning the Beneficiary's location during the period of her claimed employment abroad and discrepancies in several documents submitted in support of the petition.

The Petitioner filed a motion to reopen, which we dismissed in September 2018, stating that the Petitioner had not overcome the stated grounds for denial of the petition and dismissal of the appeal.

The Petitioner then filed a combined motion to reopen and reconsider, which we dismissed in March 2020. In dismissing that motion, we observed that the Petitioner contested the original grounds for denial of the petition but did not address or overcome other disqualifying issues that we later raised.

Subsequently, the Petitioner then filed a motion to reconsider. We dismissed that motion in February 2021, stating: "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."

The matter is now before us on a motion to reopen and reconsider, the Petitioner's fourth motion overall.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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).

On motion, the Petitioner submits materials intended to establish that the Beneficiary worked in a managerial capacity for the Petitioner's foreign affiliate. Specifically, the Petitioner submits copies of:

- A letter dated March 2017, attributed to an executive partner of the foreign company, stating that the company had employed the Beneficiary as a retail manager since 2010;
- Purported payroll records from the foreign company, dated July 2016; and
- The Beneficiary's résumé.

None of these materials are new to the record. The Petitioner had previously submitted all these documents either with the initial filing of the petition or in response to a request for evidence in April 2017. Because the Petitioner asserts no new facts and has submitted no new evidence, the Petitioner's fourth motion does not meet the requirements of a motion to reopen and must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

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).

The Petitioner's latest motion includes this passage:

> We have submitted all the supporting documents requested. We have not impeded USCIS in any way from validating all the supporting documents for either the U.S. entity or the Foreign entity. The Director states that the documents submitted on motion were insufficient to establish the beneficiary's year of qualifying employment abroad.
>
> The Service cites no case law or makes any reference to 8 CFR that supports their repeated denials of this I-129. Rather it appears that this is an intentional failure to recognize the legitimacy of the supporting documents without rational or good cause supported by case law rather than personal opinion.

The above passage is almost identical to language in the brief that accompanied the Petitioner's third motion.

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). A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented previously and seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

The Petitioner states that we determined that the Petitioner "failed to present new evidence," and that we did not "explain why the probative evidence [in the record] doesn't qualify." Here again, the Petitioner seeks to reach past its third motion to earlier stages in the proceeding. The only prior decision properly before us on motion is our February 2021 decision dismissing the Petitioner's April 2020 motion. That motion was a motion to reconsider, which included no new evidence. Therefore, our 2021 decision did not discuss evidence except when describing the prior timeline of the case. In that context, we noted that the Petitioner's second motion, filed in October 2018, contained "no new evidence."

In earlier decisions in this case, we identified specific shortcomings relating to the Petitioner's evidence and explained why the Petitioner had not overcome those issues. Our 2017 appellate decision identified several issues that raised serious doubts about the authenticity and credibility of the Petitioner's evidence. Our 2021 dismissal of the Petitioner's third motion included this passage:

> 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.

Repetition of arguments that predate our 2021 decision does not establish error in that decision, and at this late date we will not consider arguments about earlier decisions until and unless the Petitioner overcomes the dismissal of the third motion. We will not re-adjudicate the petition anew.

Also on motion, the Petitioner observes that our 2021 decision included a reference to "Form I-140, Nonimmigrant Petition for an Intracompany Transferee," although the correct form number is I-129, not I-140. The Petitioner states: "If the Service is unable to distinguish the case they are arguing this creates doubt that the officer reviewing the case is cognizant of whether their decision was for an I-129, or for an I-140." This reference was erroneous, as the Petitioner observes, but the erroneous reference appeared only in a heading before the body of the decision. That heading correctly referred to the petition as relating to a nonimmigrant classification, and the first paragraph of substantive text correctly stated that the Petitioner seeks "the L-1A nonimmigrant classification" on the Beneficiary's

behalf. The Petitioner does not establish that the error in the form number, outside the narrative text of the decision, influenced or prejudiced the outcome of that decision.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.