U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-A-USA, INC.

DATE: JAN. 10, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an exercise and fitness studio, seeks to extend the Beneficiary's temporary employment as its chief executive officer (CEO) 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, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. The Petitioner appealed the Director's decision and we dismissed the Petitioner's appeal.

The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner submits a brief, re-submits the evidence it submitted on appeal, and asserts that the Beneficiary's employment will be in both a managerial capacity and an executive capacity.

Upon review, we will deny the combined motion.

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen the proceeding to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (e.g. submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

A. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "Requirements for motion to reopen," states:

> A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence.

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states:

> Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . was filed.[1]

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

B. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "Requirements for motion to reconsider," states:

> A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 4 of the Form I-290B, which states:

> Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions when filed and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) ("Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow

[1] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part: "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission."

from new law or a de novo legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); *see also Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

II. ANALYSIS

For the reasons discussed below, we will deny the motion to reopen and the motion to reconsider.

The Petitioner has submitted a 12-page brief and copies of all exhibits (labeled Exhibit A through Exhibit L) it previously submitted in support of its appeal. Upon review of the brief, we note that its contents are repeated verbatim from the brief submitted in support of the Petitioner's appeal and therefore address the Director's initial decision dated January 20, 2016.

Upon review, the Petitioner has not submitted any document that contains "new facts" in support of a motion to reopen. 8 C.F.R. § 103.5(a)(2). The submitted brief and evidence were already reviewed, considered and thoroughly addressed in our previous decision dismissing the Petitioner's appeal. Accordingly, the motion to reopen will be dismissed.

Further, as stated above, the reiteration of previous arguments already made on appeal does not meet the requirements of a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec. at 60. We already reviewed and addressed these arguments, and the associated exhibits submitted on appeal, in our decision dated August 11, 2016. In order to meet the requirements for a motion to reconsider, the Petitioner's motion must state specific factual and legal issues, raised in that decision, that were decided in error.

Here, the Petitioner has neither acknowledged nor addressed the specific findings made in our decision. We conclude that the documents constituting this motion do not articulate how our decision on appeal misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the appeal was rendered. Therefore, the Petitioner has not submitted any document that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be denied.

The Petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the combined motion will be denied, the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of B-A-USA, Inc.*, ID# 154493 (AAO Jan. 10, 2017)