U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16599918

Date: JUL. 19, 2021

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner operates a business that frames art and documents. It seeks to employ the Beneficiary as its chief financial officer under the L-1A nonimmigrant visa category for managers and executives. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L).

The Director of the Vermont Service Center denied the petition, and we dismissed the Petitioner's following appeal. We affirmed the Director's conclusion that the company did not demonstrate the claimed, executive nature of the proposed employment. *See Matter of F-B- Inc.*, ID# 1637248 (AAO Oct. 10, 2018). We dismissed the Petitioner's following five motions. Most recently, we found that the Petitioner did not demonstrate that we erred in dismissing the company's January 2020 motion to reopen as untimely.

The matter is before us again on the Petitioner's motion to reconsider. The company bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon review, we will dismiss the motion.

I. MOTION CRITERIA

A motion to reconsider must demonstrate that our most recent decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the requested benefit.

II. THE MOTION TO RECONSIDER

The Petitioner asserts its timely filing of the January 2020 motion to reopen and submits a copy of a payment receipt. The receipt indicates the company's submission of the motion to a commercial delivery service, which then delivered the filing to USCIS.

As previously indicated, however, a petitioner must base a motion to reconsider on the record at the time of our most recent decision. *See* 8 C.F.R. § 103.5(a)(3). The Petitioner did not previously submit the delivery service receipt to USCIS. We therefore can't consider it with the motion to reconsider.

Even if we could consider the delivery service receipt, it wouldn't establish the Petitioner's timely filing of the January 2020 motion to reopen. A petitioner must generally file a motion to reopen within 33 days of the date USCIS mailed an adverse decision. 8 C.F.R. §§ 103.5(a)(1), 103.8(b).[1] A properly executed motion is "filed" when USCIS receives it at the designated location. 8 C.F.R. § 103.2(a)(7)(i). We mailed an adverse decision to the Petitioner on December 11, 2019. The company therefore had to file its motion on or before January 13, 2020. The payment receipt shows the Petitioner's submission of the motion to the delivery service on January 15, 2020. Thus, by the time the delivery service received the motion, it was already untimely. We ultimately received the filing at the designated location on January 17, 2020, 37 days after the decision's mailing. *See* 8 C.F.R. § 103.5(4) (requiring USCIS to dismiss a motion that does not meet applicable requirements).

USCIS may excuse the untimely filing of a motion to reopen if a petitioner demonstrates that the delay was reasonable and beyond its control. 8 C.F.R. § 103.5(a)(1). The Petitioner, however, has not demonstrated – nor even asserted – that its delay in filing the January 2020 motion was reasonable or beyond its control.

For the foregoing reasons, the Petitioner has not demonstrated that we erred in dismissing its January 2020 motion to reopen as untimely. The motion to reconsider therefore does not establish that our most recent decision misapplied law or policy. We will therefore dismiss the motion.

III. DOING BUSINESS IN THE UNITED STATES

A petitioner must demonstrate eligibility at the time of filing a benefit request and throughout its adjudication. 8 C.F.R. § 103.2(b)(1). The record no longer establishes the Petitioner's required status as a "qualifying organization." *See* 8 C.F.R. § 214.2(l)(3)(i). Evidence no longer demonstrates that the company "[i]s or will be doing business . . . as an employer in the United States." *See* 8 C.F.R. § 214.2(l)(ii)(G)(2) (defining, in part, the term "qualifying organization"). The term "doing business" means "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization." 8 C.F.R. § 214.2(l)(ii)(H).

Online, government records indicate that, as of December 31, 2020, the Petitioner's home state of Virginia terminated the company's status as a corporation after it did not timely file an annual report. *See* Va. Corp. Comm'n, "Business Entity Search," https://cis.scc.virginia.gov/EntitySearch/Index (last visited Jul. 16, 2021). The corporate termination suggests that the company no longer does or intends to do business in the United States.

[1] In response to the COVID-19 pandemic, USCIS has temporarily relaxed deadlines for many submissions and filings. For example, USCIS now reviews motions filed up to 60 days from decision issuances. *See* USCIS, "USCIS Extends Flexibility for Responding to Agency Requests" (Jun. 24, 2021), https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-5 (last visited Jul. 19, 2021). These more flexible deadlines, however, did not take effect until March 1, 2020. *Id.* They therefore do not apply to the Petitioner's January 2020 motion to reopen.

Thus, in any further filings in this matter, the Petitioner should submit additional evidence that it continues or intends to do business in this country. Otherwise, we may deny the petition on this additional ground.

IV. CONCLUSION

The Petitioner has not demonstrated that our most recent decision misapplied law or policy.

ORDER: The motion to reconsider is dismissed.