U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32527036

Date: JUL. 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a deli and convenience store, seeks to temporarily employ the Beneficiary as its manager under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Act, 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary was employed abroad for one continuous year within the three years preceding the date of the petition's filing or that the Beneficiary's foreign employment was in a managerial or executive capacity. We dismissed a subsequent appeal. The matter is now before us on 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.

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).

In dismissing the Petitioner's appeal, we noted that the Petitioner did not specifically articulate any deficiencies in the Director's decision. We further determined that the Petitioner's appellate assertions did not directly address the lack of evidence discussed by the Director in the denial decision, such as the lack of probative supporting documentation to substantiate the Beneficiary's performance of managerial duties, the foreign employer's employment of subordinates reporting to him, how his subordinates relieved him from performing non-qualifying tasks, and his personnel authority over his subordinates, including his ability to hire or fire them, or recommendation such actions. We further noted that the Petitioner merely reiterated the statutory definition of a manager, and concluded that in the absence of supporting documentation to corroborate the Beneficiary's performance of managerial

or executive duties abroad, his delegation of non-qualifying tasks to subordinates, or his performance of tasks consistent with personnel authority over his claimed subordinates, the Petitioner had not established eligibility for the benefit sought.[1]

On motion, the Petitioner submits a letter from the foreign employer's accountant depicting the Beneficiary's role in the organization.[2] The letter states:

> This is to confirm that we manage [the foreign employer] as its accountant. We can confirm that [the Beneficiary] has worked for [the foreign employer] from August 2020 to November 2022.
>
> As accountant of the company, we had several dealing with [the Beneficiary] and he has played an important role in the employee placement within the company. Furthermore, he has engaged in company major decision such as work contract for employees and their working hours.

The letter submitted on motion does not provide new facts to overcome our previous determination. In our prior decision, we emphasized the lack of probative supporting documentation to substantiate the Beneficiary's performance of managerial duties, the existence of his foreign subordinates and how they relieved him from performing non-qualifying tasks, and the lack of supporting documentation demonstrating that the Beneficiary exercised personnel authority over his subordinates. Here, the submitted letter merely restates previously submitted claims regarding the Beneficiary's dates of employment and duties abroad and offers no independent evidence to substantiate those claims. Reasserting previously stated facts does not constitute submission of "new facts."

The Petitioner has not provided any new facts supported by documentary evidence constituting a factual basis for us to reopen the matter. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

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[1] In dismissing the appeal, we reserved the issue of whether the Beneficiary had one continuous year of qualifying employment abroad within the three years preceding the petition's filing.

[2] We note the Petitioner's submission of a supplemental brief approximately one month after the filing of the motion. A motion to reopen must "be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). Unlike the regulations pertaining to appeals, the regulations pertaining to motions to reopen and reconsider do not permit the filing of briefs or additional evidence other than concurrently with the motion except when USCIS reopens or reconsiders a decision on its own motion. *See* 8 C.F.R. § 103.3(a)(2)(vii); 8 C.F.R. § 103.5(a)(5)(v)(ii). Therefore, we will not consider the Petitioner's supplemental brief and evidence, as this documentation was not submitted concurrently with the instant motion.