U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17864971

Date: JUL. 20, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, describing itself as a "restaurant, food and beverage business," seeks to temporarily employ the Beneficiary in the United States as its chief operating officer 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 Director of the California Service Center denied the petition, concluding the Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity and that the new office would support the Beneficiary in a managerial or executive position within one year of the petition's approval.[1] The Petitioner later filed an appeal that we dismissed. The matter is now before us on a motion to reconsider. Upon review, we will reject the motion to reconsider.

The regulations require that a motion to reconsider be filed within 30 days of the decision that the motion seeks to reconsider, including three days for service by mail. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b). There is no exception to this requirement.[2] The date of filing is not the date of mailing, but the date when U.S. Citizenship and Immigration Services (USCIS) receives the intended motion: (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion, instructions; and (2) at the location that those instructions designate for filing motions.[3] We acknowledge that USCIS has granted some flexibility with respect to the filing of motions due to the coronavirus pandemic. Consistent with USCIS guidance, we will accept Forms I-290B filed up to 60 calendar days from the date of decisions issued anytime between March 1, 2020,

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[1] Upon *de novo* review, we only concluded the Petitioner did not establish that it would support the Beneficiary in a managerial or executive capacity within one year of the petition's approval and reserved the additional basis of denial specified by the Director. Again, because our identified basis for denial was dispositive of the appeal, we declined to reach and reserved the Petitioner's arguments regarding the remaining ground for denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[2] This is in contrast to the regulations related to the timely filing of a motion to reopen which provide that untimeliness may be excused "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i).

[3] *See* 8 C.F.R. §§ 103.2(a)(1) ("every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions" and with whatever fees are required by regulation); 103.2(a)(6) (form instructions specify filing location).

and September 30, 2021. *See* USCIS Extends Flexibility for Responding to Agency Requests, https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-5 (last visited July 20, 2021).

The current Form I-290B was received by USCIS on March 11, 2021, 104 days after our appeal decision was issued on November 27, 2020. This is substantially more time than the 60-day flexibility granted by USCIS to file an appeal or motion in response to decisions filed between March 1, 2020, and September 30, 2021. As such, the motion to reconsider must be rejected as there is no basis in the regulations for us to accept an untimely motion to reconsider.

ORDER: The motion to reconsider is rejected.