U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31865798

Date: JULY 31, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a laundry service, seeks to temporarily employ the Beneficiary as accountant and general 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 Vermont Service Center denied the petition in August 2015, concluding that the Petitioner did not establish that it would employ the Beneficiary in a qualifying managerial or executive capacity. The Petitioner appealed that decision, and we remanded the matter for a new decision because the Director had not sufficiently specified the grounds for denial.

The Director again denied the petition in March 2018, concluding that the Petitioner had not established that the Beneficiary had been employed abroad in a managerial capacity, and that the new office would support a managerial or executive position within one year after approval of the petition. The Petitioner filed a motion to reopen that decision. The Director dismissed that motion in May 2019, stating that the Petitioner had provided no new facts on motion and that the evidence submitted on motion does not overcome the grounds for denial. The Director also stated that government arrival and departure records show that the Beneficiary has been in the United States since 2007, and therefore he was not employed abroad from 2011 to 2014 as the Petitioner had claimed.

The Petitioner appealed that decision, and we dismissed the appeal in March 2021, stating that the Petitioner had not shown that the Director erred in dismissing the motion. We reserved the issue of the Beneficiary's presence in the United States during the time of his claimed employment abroad.

The Petitioner filed a motion to reopen, which dealt exclusively with the issue of the Beneficiary's claimed employment abroad. We dismissed that motion in December 2023, because the Petitioner did not state any relevant new facts, supported by credible evidence, that would warrant reopening the proceeding.

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.

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 a partial printout of the "Financial Managers" page from the *Occupational Outlook Handbook*, published by the U.S. Department of Labor's Bureau of Labor Statistics. The Petitioner asserts that this information establishes that the Beneficiary possesses the minimum requirements for the proffered U.S. position.

This information does not relate to our December 2023 motion decision, which is the only decision properly under review in the Petitioner's latest motion. In our December 2023 decision, we dismissed the Petitioner's motion because "the evidence submitted in support of the current motion is not relevant to the primary basis for the Director's denial of the petition and our prior dismissal of the appeal," and because "the Petitioner has not stated new facts to warrant reopening of the proceeding." The submission of information from the *Occupational Outlook Handbook* does not address the procedural issues from the prior decision or show that our prior decision was in error.[1]

In its latest motion, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, we will dismiss the motion to reopen.

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner asserts that it had previously submitted "probative evidence [that] affirms the executive responsibilities the beneficiary has with the foreign company." But the scope of the present motion is limited to our prior decision, from December 2023. In that decision, we did not discuss the merits of the Petitioner's claims. Our review was limited to whether the Petitioner's prior motion to reopen, filed in April 2021, met the requirements of such a motion.[2] We concluded that the April 2021 filing did not meet those requirements.

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[1] Even in our decision before last, issued in March 2021, we did not indicate that the specific requirements for the Beneficiary's intended U.S. position were at issue. Therefore, the printout from the *Occupational Outlook Handbook* does not address issues relevant to reopening on motion.

[2] As we advised the Petitioner previously, 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). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen.

The Petitioner also cites a November 2018 USCIS Policy Memorandum to support arguments related to the timing of the Beneficiary's presence in the United States. This issue was not a basis for the December 2023 dismissal notice, and therefore the Petitioner's discussion of the issue on motion does not establish error that would warrant reconsideration of our December 2023 decision. [3]

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 to reconsider. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] In our March 2021 decision, we reserved the issue of the Beneficiary's U.S. presence because the appeal was dismissible on other grounds. *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). In the May 2019 decision, the Director observed that the Beneficiary must have accrued at least one continuous year of qualifying employment abroad during the three years immediately preceding the petition's filing date of April 16, 2014. The Director stated that the Beneficiary did not meet this requirement, because he "arrived in the United States on June 22, 2007, and has never left." The record includes entry stamps showing the Beneficiary's June 2007 admission into the United States, and no similar evidence of any later departure or arrival. The Petitioner's uncorroborated assertion that the Beneficiary departed in late 2007 and returned in early 2014 has no weight as evidence. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Therefore, the preponderance of the evidence indicates that the Beneficiary was not employed abroad for at least one year between April 2011 and April 2014 as required for eligibility under this petition.