U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 32803969

Date: JUL. 31, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a trucking company, seeks to temporarily employ the Beneficiary in the United States as a logistics manager in its new office[1] 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 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 California Service Center denied the petition on multiple grounds, concluding that the Petitioner did not establish, as required, that: (1) the Petitioner had a qualifying relationship with the Beneficiary's foreign employer; (2) the Petitioner secured sufficient physical premises to house its new office; (3) the Beneficiary was employed abroad for one continuous year in the three years preceding the date the petition was filed; (4) the Beneficiary was employed in a managerial or executive capacity abroad; and (5) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of the date the petition was filed.

The Petitioner subsequently filed a motion to reopen. The Director granted the motion, but following additional review, concluded that the petition would remain denied. The Petitioner then filed an appeal that we rejected as untimely. We then dismissed the Petitioner's combined motion to reopen and reconsider, as well as two subsequent motions to reconsider, and the matter is now before us on a 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

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

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).

We dismissed the Petitioner's first combined motion to reopen and reconsider, determining that the Petitioner had not demonstrated that our decision to reject its appeal was erroneous. In considering the Petitioner's subsequent motion to reconsider, although we did not agree that the Petitioner filed a timely appeal, we nonetheless reconsidered the Director's decision to deny the petition and provided the Petitioner with a decision fully addressing one of the denial grounds on January 25, 2021. Namely, we identified critical evidentiary deficiencies, including discrepancies regarding the Petitioner's name and whether it was formed as a partnership or corporation, and concluded that the Petitioner and the Beneficiary's foreign employer do not meet regulatory criteria for a qualifying relationship either as parent and subsidiary or as affiliates. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(K) and (L) (for definitions of subsidiary and affiliate, respectively). We determined that the qualifying relationship issue was dispositive of the Petitioner's motion and therefore we declined to reach the Petitioner's arguments with respect to the other denial 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).

The Petitioner subsequently filed a second motion to reconsider, which we dismissed on July 6, 2021.

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 Petitioner's motion to reconsider.

In our latest decision, incorporated here by reference, we determined that the Petitioner did not establish that we misinterpreted the ownership breakdowns of the Petitioner and the Beneficiary's foreign employer or that we incorrectly applied the regulatory definitions of "subsidiary" and "affiliate" to these ownership breakdowns. We further determined that the Petitioner did not cite any precedent decisions or USCIS policy establishing that our decision was incorrect based on the evidence in the record at the time of our prior decision. *See* 8 C.F.R. § 103.5(a)(3).

In addition, while we acknowledged the Petitioner's claim that it intended to operate in the United States as a partnership upon dissolution of its corporate status, we noted that this claim did not establish that our decision was incorrect based on the evidence in the record at the time of our prior decision. We further noted that the Petitioner's intended dissolution undermined its eligibility for the requested nonimmigrant visa as it raised serious questions about whether it continued to exist as an importing employer and whether it is authorized to conduct business in a regular and systematic manner. *See* section 214(c)(1) of the Act; *see also* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (l)(3).

On motion, the Petitioner submits a brief and a copy of our most recent decision. As our decision is already a part of the record, it is not new evidence that could provide proper cause for reopening this matter. In its brief, the Petitioner again asserts that it maintains a qualifying relationship with the claimed foreign parent company, and states that contrary to its previous claims of intended dissolution, it continues to maintain its corporate status in the State of Texas. The Petitioner reiterates prior

arguments and refers to evidence that we reviewed in prior motions but has not provided new facts or evidence to support a determination that our previous decisions were in error.

As noted above, a motion to reopen must state new facts, supported by documentary evidence, that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." Here, the Petitioner has not provided new facts to establish that we erred in dismissing the latest motion to reconsider. 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, the underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.