U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32390854

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 company producing and selling clothing and fashion accessories, seeks to temporarily employ the Beneficiary as the president and chief executive officer of 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 the record did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer, 2) the Beneficiary was employed abroad for one continuous year in the three preceding the date the petition was filed, 3) the Petitioner had sufficient physical premises to house the new office, and 4) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of an approval of the petition. The Petitioner later filed a motion to reopen and reconsider with the Director. In response to the motion, the Director concluded the Petitioner established it had a qualifying relationship with the Beneficiary's foreign employer and that she had been employed abroad for one continuous year in the three preceding the date the petition was filed. However, the Director dismissed the motions, determining the Petitioner did not overcome the other stated grounds for ineligibility. The Petitioner then filed an appeal that we dismissed.[2] The matter is now before us on combined motions to reopen and reconsider.

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[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.

[2] In dismissing the appeal, we concluded the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition, and since this was dispositive, we reserved the other 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).

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 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). 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. In our prior decision, we adopted and affirmed the Director's prior motion decision. In support of the current motion, the Petitioner requests that that we "please reconsider [our] decision on the matter of ambiguities and discrepancies in the L1A matter of the L1A visa for the beneficiary…and petitioner."

In our appeal decision, we determined that the Petitioner did not specifically articulate what evidence the Director did not consider when dismissing the prior motion to reopen and we further emphasized that the Petitioner did not discuss the Director's dismissal of the motion to reconsider. We noted that the Director provided two well-reasoned decisions discussing the insufficiency of the Beneficiary's asserted duties and the inadequacy of its proposed investment in the new office when the petition was filed. We further indicated that the Petitioner did not specifically discuss why the Director's conclusions were in error nor what evidence was not considered by the Director. As such, we concluded that we were summarily dismissing the Petitioner's appeal, as they did not specifically identify an erroneous conclusion of law or statement of fact on the part of the Director. 8 C.F.R. § 103.3(a)(1)(v). Further, adopted and affirmed the Director's decisions. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). On motion, the Petitioner again does not specifically articulate why our prior decision represented an incorrect application of law or policy based on the record of proceeding at the time of that decision. Therefore, we will dismiss the motion to reconsider. 8 C.F.R. § 103.5(a)(4).

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 bank records dating from January 2023 through December 2023, a financial summary reflecting its sales in 2023, banking information from 2023, 2023 IRS Forms W-2, Wage and Tax Statements, and documentation showing bank deposits dating from June through December 2021. In addition, the Petitioner submits a letter dated in February 2024 setting for the Beneficiary's current duties as chief executive officer of the company.

In our prior decision dismissing the appeal, we emphasized the Director's conclusion that the Petitioner provided a generic duty description for the Beneficiary that did not sufficiently articulate

whether she would primarily perform managerial or executive duties. We noted that the Petitioner did not address this valid conclusion, but only ambiguously contended that the Beneficiary would perform both managerial and executive-level tasks. We indicated that the Petitioner did not identify which duties were managerial or executive-level tasks, nor which tasks she would primarily perform.[3]

On motion, the Petitioner provides a duty description dated in February 2024, applicable to a business that appears to have been doing business for several years. It is not clear whether or not these duties apply to September 2021 when the petition was filed. We emphasize that that the Petitioner filed a new office petition, and at that time, was required to establish that it was more likely than not that it would employ the Beneficiary in a qualifying managerial or executive capacity within one year of the date the petition was filed.[4] Therefore, even if the Petitioner demonstrated that the Beneficiary was acting in a qualifying managerial or executive capacity with new evidence from 2023 and 2024, this would not be relevant to establishing the Beneficiary's eligibility under a new office petition in September 2021. For these reasons, we will not consider the evidence from 2023 or later as it does not constitute new evidence relevant to the Beneficiary's eligibility under the initial new office petition. The petition appears to be moot, since the Petitioner asserts it has been an operating business for years.[5]

Therefore, we also decline to address the evidence specific to the contents of the Petitioner's bank account in September 2021, as even if deemed sufficient, this would not lead to the Beneficiary's eligibility under the current petition. In our prior decision, we concluded that the Petitioner did not address on appeal the Director's conclusion that the Petitioner did not sufficiently establish the size of its U.S. investment, as necessary to demonstrate that the proposed new office would support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). Here, we decline to consider new evidence of a purported 2021 investment for the first time on motion when the Petitioner had numerous opportunities to submit this with the petition, in response to the Director's request for evidence, in support of its first motion, and on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on motion, particularly in relation to what is now a moot petition. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established

[3] A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

[4] To determine whether the Petitioner established that its new office would support a managerial executive position within one year, we review the Beneficiary's proposed job duties, along with the Petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the Beneficiary in the intended managerial or executive capacity. The totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible, considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

[5] The Petitioner may file a new Form I-129 petition to demonstrate her current eligibility within an already established business that has been doing business for more than one year.

eligibility, therefore, the motion to reopen must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.