U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16974895

Date: JUN. 14, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, which is self-described as a trucking business, seeks to continue the Beneficiary's temporary employment as its chief executive officer under the L-1A nonimmigrant classification for intracompany transferees.[1] 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, concluding that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity under the extended petition. We dismissed the Petitioner's subsequent appeal of that decision on the same ground and on the additional ground that the Petitioner did not establish it was doing busines at the time it filed this petition in February 2016. The Petitioner has since filed four consecutive motions to reconsider, and we have dismissed each motion. The matter is now before us on a fifth motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. §1361. Upon review, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period February 27, 2015, until February 27, 2016. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). In this case, the prior decision at issue is our dismissal of the Petitioner's fourth motion to reconsider.

A. Procedural History

As noted, the Director denied the petition based on a determination that the Petitioner did not establish that it would employ the Beneficiary in a managerial capacity under the extended petition. We dismissed the appeal after reaching the same conclusion. Based on our *de novo* review of the record, we also identified a second ground of ineligibility, concluding that the Petitioner did not establish that it was "doing business," as defined at 8 C.F.R. § 214.2(l)(1)(ii)(H), at the time it filed this petition in February 2016.

The Petitioner subsequently filed a motion to reconsider, in which it argued that it had met its burden to establish that the Beneficiary would be employed in a managerial capacity. We dismissed the motion, concluding that the Petitioner did not demonstrate that we had incorrectly applied the law or USCIS policy in dismissing its appeal. We also dismissed the Petitioner's motion to reconsider because it did not dispute our separate determination that it was not doing business at the time it filed the petition. We informed the Petitioner that this omission, by itself, provided a sufficient basis to dismiss the motion.

The Petitioner subsequently filed a second motion to reconsider. We dismissed that motion as untimely pursuant to 8 C.F.R. § 103.2(a)(2)(v)(B)(*1*) because it was not filed within 33 calendar days of the date we mailed our previous decision.[2]

The Petitioner then filed a third motion to reconsider, in which it asserted that its second motion should have been accepted as timely filed. The Petitioner explained that the filing was only late because USCIS had initially improperly rejected and returned the Form I-290B, Notice of Appeal or Motion.[3] We dismissed the third motion, determining that the Petitioner did not establish that our dismissal of the prior motion as untimely was based on an incorrect application of law or USCIS policy. We also addressed the merits of the second motion, advising the Petitioner that we would have dismissed the motion even if it had been deemed timely filed. Specifically, we emphasized that the Petitioner's first motion had been dismissed, in part, because the Petitioner did not dispute our determination that it was not doing business when it filed the petition in February 2016. The second motion did not include a claim that the dismissal of the initial motion for this reason was based on an incorrect application of

[2] *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). The Petitioner's second motion, which was due on or before May 28, 2019, was filed on May 30, 2019, 35 days after we mailed our decision.

[3] The record reflects that the Petitioner's submission was delivered to the designated filing location on May 21, 2019, and that USCIS returned to the Petitioner with the explanation that it had either not submitted payment for the required fee or had submitted payment in an incorrect amount.

law or USCIS policy and therefore did not meet the requirements for granting a motion to reconsider. We also emphasized that, by not disputing our adverse determination regarding the "doing business" requirement, the Petitioner had effectively waived or abandoned its claim that it meets that eligibility requirement.

Finally, the Petitioner filed a fourth motion to reconsider in which it once again claimed that its second motion had been timely filed, re-submitted some evidence related to that filing, and described some of the business activities the Beneficiary has performed on behalf of the company since his initial arrival in the United States. The Petitioner also provided copies of financial documents from the years 2017 through 2019 which were not previously in the record, along with copies of some previously submitted financial documents and business records.

We dismissed the fourth motion on December 14, 2020, concluding that the Petitioner had not demonstrated that we had incorrectly applied the law or USCIS policy in dismissing the third motion to reconsider or that we had erroneously dismissed the second motion as untimely. We also concluded that the brief submitted on motion did not establish how the business activities performed by the Beneficiary met all elements of the definition of "managerial capacity" at section 101(a)(44)(A) of the Act as discussed in our earlier decisions, or how the previously submitted evidence demonstrated that the Petitioner was "doing business," as defined in the regulations, when this petition was filed in February 2016. Although the Petitioner also submitted new evidence from the years 2017 to 2019, we do not consider new facts or evidence in a motion to reconsider. *See* 8 C.F.R. 203.5(a)(3) (stating that a motion to reconsider must establish that our 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).

B. Motion to Reconsider

As noted, the matter is now before us on a fifth motion to reconsider. We emphasize that our decision here is not an adjudication of the underlying petition, based on a review of the complete record. Rather, our review is limited any specific errors that the Petitioner identifies in our December 14, 2020, decision. Merely disagreeing with our conclusions does not provide a basis for reconsideration of our decision.

Here, the brief submitted in support of the instant motion repeats arguments made in the Petitioner's prior briefs, and does not specifically address our reasons for dismissing the Petitioner's fourth motion, state the reasons for reconsideration of that decision, or explain how we incorrectly applied the law or USCIS policy by dismissing it.

Rather, in the instant motion to reconsider, the Petitioner once again addresses our dismissal of its second motion to reconsider, claiming that a USCIS error caused it to be filed untimely. The Petitioner acknowledges that the motion was initially rejected and returned based on its alleged failure to pay the filing fee, or because it paid the incorrect fee. However, it maintains that it did in fact submit a check in the appropriate amount with that filing. The Petitioner re-submits a copy of a voided company check, dated May 20, 2019, and emphasizes, for the first time, that the check was returned to it bearing a stamp that reads "U.S. Department of Homeland Security, Citizenship and Immigration Services."

The Petitioner states that the stamp was placed by USCIS and provides sufficient proof that the check was in fact included with its initial, timely submitted attempt to file its second motion to reconsider.

However, as discussed in our June 2020 decision dismissing the third motion, even if we determined that the second motion to reconsider should have been accepted as timely filed, the motion would have been dismissed on its merits because it did not establish eligibility for the benefit sought. As explained above, we dismissed the Petitioner's first motion to reconsider, in part, because it did not address or dispute our determination that the record lacked sufficient evidence that the Petitioner was doing business as defined in the regulations. By neglecting to dispute one of the two grounds for dismissal of appeal in its first motion to reconsider, the Petitioner abandoned its claim that it met this eligibility requirement. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). In its second motion to reconsider, the Petitioner did not argue that we incorrectly applied law or USCIS policy by dismissing the prior motion based, in part, on its failure to address both grounds for dismissal of the appeal. Accordingly, we determined that the second motion would have been dismissed even if deemed to be timely filed. The Petitioner has not addressed this determination in subsequent filings.

With the current motion, the Petitioner also resubmits various balance sheets and financial documents that are already in the record of proceeding and asserts that the evidence establishes that "our company was indeed operating." However, as noted, disagreeing with our conclusions without establishing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). We explained in our decision dismissing the appeal why the balance sheets did not establish that the Petitioner was doing business as defined in the regulations. The Petitioner effectively waived the issue by not raising it or disputing our determination in its initial motion to reconsider. Further, the Petitioner cannot overcome that ineligibility determination by generally disagreeing with our conclusion that it did not satisfy the definition of "doing business."

Nor does the Petitioner's current motion overcome our previous determination that the record does not establish that the Beneficiary would be employed in a managerial capacity under the extended petition. The Petitioner has once again described activities performed by the Beneficiary over the last several years, but has not explained how the offered position met all elements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act at the time the petition was filed in February 2016. In sum, the Petitioner has not demonstrated that our prior decisions were based on any incorrect application of law or USCIS policy based on the evidence of record at the time of the decision.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not shown proper cause for reconsideration of our prior decision, nor has it established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.