U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7723313

Date: MAR. 3, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner is a Texas corporation. At the time of filing, it intended to open and operate a dry-cleaning business[1] and sought to temporarily employ the Beneficiary as "Accountant/General Manager" of its new office[2] 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 concluded that the Petitioner did not provide new facts in support of its motion to reopen and therefore denied the motion, stating that the submitted evidence is insufficient to overcome the grounds for the denial of the petition.[3] The Director also determined that the Beneficiary was not employed abroad for one year out of the three years prior to filing this petition. The matter is before us on appeal, where we will assess the propriety of the Director's decision to dismiss the Petitioner's motion to reopen.[4]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Director incorrectly denied the motion to reopen. As the Director correctly noted, the new facts offered in support of the motion to reopen must possess such significance that "the new evidence offered would likely change the result in the case." *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992). In other words, a motion to reopen should only be granted

[1] The petition was originally filed in April 2014, over five years prior to the filing of the Form I-290B, Notice of Appeal or Motion, that is currently before us.

[2] 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.

[3] The petition was initially denied in 2015 and the Petitioner filed an appeal. We remanded the matter and a new decision was issued in which the Director again denied the petition. The Petitioner filed a motion to reopen, which the Director also dismissed. The matter before us is an appeal from the Director's decision denying the motion to reopen.

[4] A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

under a limited set of circumstances where the Petitioner demonstrates that the new evidence would result in a different outcome. *See id.*

In the matter at hand, the Petitioner provided a motion brief claiming that the Beneficiary assumed the role of a function manager. However, the Petitioner did not identify the essential function the Beneficiary is claimed to have managed, nor did it provide evidence to support this claim. *See Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). Further, although the Petitioner listed several unpublished AAO decisions addressing the function manager issue, it did not establish that the facts of those decisions are analogous to the facts in the matter at hand. Moreover, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on U.S. Citizenship and Immigration Services, unpublished decisions are not similarly binding.

The Petitioner's motion to reopen also did not include new facts addressing the Director's adverse findings regarding the Beneficiary's employment in a managerial or executive capacity within one year of the petition's approval. Namely, in the decision dismissing the motion the Director pointed to inconsistencies in the Petitioner's business plan and supporting evidence regarding the funding of the new business operation. Although the Petitioner provided the foreign entity's bank statements and tax documents for various time periods that preceded the 2014 filing of this petition, it did not provide new evidence adequately addressing the deficiencies noted in the Director's decision. In sum, the Petitioner did not offer new evidence that "would likely change the result in the case." *See Coelho*, 20 I&N Dec. at 473. Therefore, the Director correctly determined that the Petitioner did not show cause to reopen the matter and dismissed the motion.

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's period of employment abroad. *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).

ORDER: The appeal is dismissed.