U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13692501

Date: MAR. 10, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner states that it is engaged in "e-commerce of various merchandise," and it seeks to permanently employ the Beneficiary as its chief executive officer under the first preference immigrant classification for multinational executives or managers. See Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The Petitioner filed a combined motion to reopen and reconsider that was subsequently dismissed as untimely filed. The Petitioner then filed a motion to reconsider which was also dismissed. The matter is before us on appeal.

On appeal, the Petitioner contends that the first combined motion to reopen and reconsider was erroneously dismissed as untimely filed. The Petitioner explained that the Director's decision was dated January 22, 2020 and the Form 1-290B, Notice of Appeal or Motion, was timely filed on February 24, 2020. However, the Director stated that the decision was dated January 16, 2020 rather than January 22, 2020. This is not correct. Thus, the Director mistakenly dismissed the motions based on the conclusion that it was a late filing when in fact it was timely filed.

The Petitioner filed an appeal, along with a supplemental brief, requesting that we vacate the Director's decisions and approve the petition.

Since the Director did not properly consider the Petitioner's motion to reopen and reconsider, we will remand the matter for consideration of that motion in accordance with the provisions of 8 C.F.R. § 103.5(a)(3). The Director shall consider both the brief submitted in support of that motion and the brief submitted in support of the appeal. The Director shall then issue a new decision on the motion to reopen and reconsider.

ORDER: The Director's decision on the Petitioner's motion to reopen is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.