U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37236838

Date: MAR. 18, 2025

Motion on Administrative Appeals Decision

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

The Petitioner, a company manufacturing insulation products, seeks to temporarily employ the Beneficiary as its director of sales and business development 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, concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in the United States in this same capacity. The Petitioner then filed an appeal that we summarily dismissed. The matter is now before us on a motion to reconsider. 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As stated, we summarily dismissed the Petitioner's prior appeal because our records indicated that at the time of our decision it did not provide a brief and/or additional evidence in support of the appeal within 30 calendar days.[2] Therefore, we concluded that the Petitioner did not specifically identify any

[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] The Form I-290B, Notice of Appeal or Motion, was filed by the Petitioner on August 22, 2024, and our summary dismissal was dated December 3, 2024. In the Form I-290, the Petitioner asserted that it would submit a brief and/or additional evidence in support of the appeal within 30 days.

erroneous conclusion of law or statement of fact in the Director's unfavorable decision, and therefore did not meet the requirements of an appeal. 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner contests the correctness of our prior decision. The Petitioner contends it submitted a brief and additional evidence "to the appropriate Service Center" on September 17, 2024, and that this was delivered on September 18, 2024. The Petitioner asserts it has provided evidence from Federal Express to demonstrate that the brief and additional evidence were submitted as asserted.

As noted, the scope of this motion is limited to our prior decision, in this case, whether we properly summarily dismissed the Petitioner's prior appeal. Upon review, we conclude that our summary dismissal was proper. The Petitioner asserts that it provided a brief and additional evidence to meet the requirements of an appeal to a "service center" in September 2024, prior to our summary dismissal decision in December 2024.[3] However, contrary to the Petitioner's contention, it does not provide any supporting evidence, including the claimed shipping documentation, to substantiate that the brief and additional evidence to support the appeal were sent in a timely manner. The Petitioner further does not indicate with detail where it sent the claimed brief and additional evidence. U.S. Citizenship and Immigration Services (USCIS) records, including our own records, do not reflect the receipt of any documentation from the Petitioner in September 2024, nor prior to our summary dismissal decision in December 2024. Therefore, the evidence reflects it is more likely than not that we did not receive any brief and/or additional evidence from the Petitioner at the time that our summary dismissal decision was issued, notably more than three months after the date the appeal was filed. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the foregoing reasons, our prior decision to summarily dismiss the appeal was in accordance with law, as at that time, the Petitioner did not identify any erroneous conclusion of law or statement of fact in the Director's unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). Therefore, the Petitioner has not demonstrated that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of that decision. 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.

[3] We note that the Form I-290B instructions in the section "Specific Instructions" related to part 2 states that when a Petitioner selects item 1.b. indicating it will submit a brief and/or additional evidence within 30 calendar days of the appeal that this must be sent "directly to the AAO." As of the date of our summary dismissal decision, there was no record of our receipt of a brief and additional evidence.