U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-H- LLC

DATE: MAR. 19, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a hotel and bar, seeks to temporarily employ the Beneficiary as its vice president and general manager 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 Director of the Vermont Service Center denied the petition and we summarily dismissed appeal. The matter is now before us on a motion to reopen and motion to reconsider. On motion, the Petitioner asserts that a brief was timely submitted and that we erred in summarily dismissing the appeal. Upon review, we will deny the motions.

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). 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. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

For the purposes of this motion, the scope of our review is limited to the latest decision, which was our decision dismissing the Petitioner's appeal. Therefore, the issue in this matter is whether we properly summarily dismissed the Petitioner's appeal. A review of the record confirms that our summary dismissal of the appeal was warranted. The regulations state: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner's appeal was filed on July 24, 2017 and consisted of a Form I-290B, Notice of Appeal or Motion, in which the Petitioner indicated that it would submit a brief or additional evidence within 30 days. While the Petitioner is not required to submit a brief or additional evidence, Part 4 of the Form I-290B does require the filing party to provide a separate sheet of paper with a statement that specifically identifies an erroneous conclusion or law or fact in the decision being appealed. The Petitioner did not submit this required statement and did not properly supplement the appeal with a brief or evidence after filing it.

On motion, the Petitioner submits tracking information and a brief statement asserting that the brief in support of the appeal was timely submitted. However, the [redacted] tracking record shows a delivery

of August 28, 2017 to the Vermont Service Center. The instructions for the Form I-290B state that "[a]ny brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly to the AAO." USCIS, *Instructions for Notice of Appeal or Motion*, 4 (April 10, 2017), available at https://www.uscis.gov/system/ files_force/files/form/i-290binstr.pdf (last accessed Mar. 6, 2018). The Petitioner's newly submitted evidence shows the Petitioner submitted his claimed brief to the incorrect address more than 30 days after filing the appeal. Accordingly, we properly determined that the regulations required the summary dismissal of the appeal.

The Petitioner has not provided new evidence on motion to establish that it had timely submitted the required statement, a brief, or additional evidence to establish a basis for its appeal. Nor has the Petitioner stated that our decision to summarily dismiss the appeal was based on an incorrect application of law or policy. Accordingly, the combined motion will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of D-H- LLC*, ID# 1414877 (AAO Mar. 19, 2018)