U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4987305

Date: MAR. 20, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a trucking company, seeks to temporarily employ the Beneficiary in the United States as a logistics manager 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 Director of the California Service Center denied the petition on multiple grounds. The Director concluded that the Petitioner did not establish, as required that: (1) the Petitioner had a qualifying relationship with the Beneficiary's foreign employer; (2) the Petitioner secured sufficient physical premises to house its new office; (3) the Beneficiary was employed abroad for one continuous year in the three years preceding the date the petition was filed; (4) the Beneficiary was employed in a managerial or executive capacity abroad; and (5) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of the date the petition was filed.

The Petitioner subsequently filed a motion to reopen and the Director reaffirmed her denial of the petition. The Petitioner then filed an appeal that we rejected as untimely. The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner refers to the previous motion to reopen it filed with the Director and notes that this was filed in a timely fashion.

Upon review, we will dismiss the motion to reopen and the motion reconsider.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

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 we based our decision on an incorrect

[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.

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. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The primary issue in this matter is whether the Petitioner has met the requirements of a motion to reopen or a motion to reconsider.

The record reflects that the Director issued her last decision in response to the Petitioner's previous motion to reopen on April 24, 2018. The evidence also indicates that United States Citizenship and Immigration Service (USCIS) rejected the Petitioner's subsequently filed appeal received on May 25, 2018, as it included an incorrect payment amount. The Petitioner later re-submitted the appeal and it was received on June 20, 2018, 57 days after the Director's decision. In our previous decision, we noted that an appeal must be filed within 33 calendar days of the date USCIS served the unfavorable decision by mail. *See* 8 C.F.R. §§ 103.3(a)(2)(i), 103.8(b). Based on the date the complete appeal was received, we rejected the appeal as untimely.

In support of this motion to reopen and reconsider, the Petitioner submits a letter discussing the timeliness of its previously filed motion to reopen with the Director in February 2018, a motion that was adjudicated on the merits. The timeliness of the Petitioner's motion to reopen filed with the Director was not at issue in our previous decision which rejected the appeal as untimely. The Petitioner has not submitted new facts supported by affidavits or other documentary evidence relevant to our previous decision to reject its appeal as untimely. As such, the Petitioner has not met the requirements of a motion to reopen. Second, the Petitioner has not articulated why our previous decision to reject its appeal as untimely was incorrect based on the evidence in the record of proceedings at the time of the decision. Therefore, the Petitioner has not met the requirements of a motion to reconsider.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen or to reconsider our previous decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.