U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15747572

Date: MAR. 26, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner is a provider of solutions to detect pipeline leaks, intrusions, or obstructions. It seeks to temporarily employ the Beneficiary in the United States as its president 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 Vermont Service Center denied the petition concluding the Petitioner did not establish that it was doing business as defined by the and that the Beneficiary would be employed in the United States in a managerial or executive capacity. We then summarily dismissed the Petitioner's appeal of that decision and the Petitioner subsequently filed the first of three combined motions to reopen and reconsider. We dismissed the first motion as untimely.[1] We also dismissed the next two motions, concluding that the Petitioner did not establish that the untimeliness was reasonable and beyond its control and that we therefore could not excuse the untimeliness of the Petitioner's motion to reopen.[2] The matter is now before us on a motion to reopen.

Upon review, we will dismiss the motion.

I. REQUIREMENTS OF A MOTION TO REOPEN

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

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

[1] The Petitioner does not dispute the lateness of its initial combined motion to reopen and motion to reconsider, whose filing deadline was November 26, 2018.

[2] A motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, including three days for service by mail. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b). There is no exception to this requirement.

II. ANALYSIS

As a preliminary matter, we note that the scope of review in any motion is narrowly limited to the basis of the prior adverse decision. In the instance, the prior adverse decision was based on the conclusion that the Petitioner did not provided new facts and supporting evidence in support of a motion to reopen, nor did it support a motion to reconsider by establishing that we incorrectly applied the law or policy in determining that the untimeliness of the Petitioner's first motion was due to a delay that was reasonable and beyond its control. See 8 C.F.R. § 103.5(a)(1)(i). Therefore, although the Petitioner discusses issues that served as grounds for the original denial, we will not address those factors and will instead limit our review to only new facts and evidence that pertain to the issues that were addressed in our prior adverse decision.

A. Timeliness of the Petitioner's Initial Motion to Reconsider

As discussed in our prior decision, the regulations require that a motion to reconsider be filed within 30 days of the decision that the motion seeks to reconsider, including three days for service by mail. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b). Because there is no exception to this requirement, we determined that the untimely filing of a motion to reconsider warrants a dismissal of that motion. The new evidence offered in support of the current motion does not address our basis for dismissing the prior motion to reconsider. Therefore, the Petitioner has not established that the new facts warrant a reopening of our prior decision to dismiss the motion to reconsider.

B. Timeliness of the Petitioner's Initial Motion to Reopen

In our prior decision, we explained that because the Petitioner provided inconsistent assertions as to its reason for filing an untimely motion to reopen in November 2018, we questioned the veracity of the Petitioner's claim that the untimeliness of the initial motion to reopen was reasonable and beyond its control.

Further, given that the untimely motion was filed in November 2018, we questioned the relevance of the Beneficiary's son's thumb injury and asthma symptoms, which occurred in September 2018 and April 2019, respectively, and determined that family obligations do not constitute events that are "beyond the control of the applicant or Petitioner," are required by the regulations. We further concluded that regardless of the reason for the Beneficiary's absence, it was not beyond the Petitioner's reasonable control to make arrangements for another employee or individual, other than the Beneficiary, to monitor and manage its correspondence during the Beneficiary's absence.

In the brief provided in support of the current motion, the Petitioner asserts that "continuing to deny our petition to re-open this case is contrary to applicable law." The Petitioner refers to "pertinent medical grounds" and the lack of an "easy" solution to address the Beneficiary's family circumstances, which included a spouse with no driver's license having to "manage multiple trips to and back from the hospital" while caring for three school-age children and one child who was younger than school age. However, as indicated by the above synopsis of prior submissions, we have considered the "pertinent medical grounds" that are referenced in this motion and further determined that the Beneficiary's absence, despite the family circumstances that may have prompted the absence, were

not beyond the Petitioner's reasonable control as the Petitioner was free to arrange for someone other than the Beneficiary to oversee the company's correspondence during the Beneficiary's absence.

In addition to the motion brief, the Petitioner provides a statement from the Beneficiary, a letter from the Little Rock Christian Academy discussing the Beneficiary's son's thumb injury in September 2018, and a letter from the Regus "Community Manager" stating that the Petitioner has leased office space from Regus "since the last couple of years" and assuring the veracity of the Beneficiary's claim that he was out of town on a "family emergency" between September and November 2018. Although all three documents contain dates that indicate they were drafted in October 2020 and are therefore deemed to be new evidence, they do not contain new relevant facts establishing that the untimeliness of the November 2018 motion was reasonable and beyond the Petitioner's control. As determined in our prior decision, the Beneficiary's family and marital obligations are reasonably foreseeable and not deemed to be the types of events that are reasonably beyond the Petitioner's control, as contemplated by the regulations.

For the reasons discussed, the Petitioner has not shown proper cause for reopening our prior decision.

ORDER: The motion to reopen is dismissed.