U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-G-E-, INC.

DATE: MAR. 28, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an event management business, seeks to continue the Beneficiary's temporary employment as its general manager 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required that the Beneficiary would be employed in a managerial or executive capacity under the extended petition. The Petitioner subsequently filed a combined motion to reopen and motion to reconsider. The Director denied the combined motion without disturbing the denial of the petition, finding that the Petitioner's submission did not meet the requirements of a motion to reopen or reconsider or overcome the grounds for denial.

The matter is now before us on appeal. Upon review, we will dismiss the appeal.

Although the Petitioner's appellate brief primarily addresses the Director's initial denial decision, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director's subsequent finding that its motion did not meet the requirements of a motion to reopen or motion to reconsider. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us is whether the Director properly found that the combined motion did not meet applicable requirements of a motion to reopen or a motion to reconsider. A motion that does not meet applicable requirements must be denied. 8 C.F.R. § 103.5(a)(4).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner's motion to reopen did not include any supporting statement and was not accompanied by any documentary evidence. The Petitioner instead indicated that it would submit a brief within 30 days; however, the regulations governing motions to reopen do not allow the Petitioner additional time to submit supporting evidence. Therefore, the Director properly found that the motion did not meet the requirements of a motion to reopen.

A motion to reconsider must establish that the underlying decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

As noted, the Petitioner's motion to reconsider included a Form I-290B, Notice of Appeal or Motion, and a cover letter indicating that the Petitioner would be submitting a brief within 30 days (by August 23, 2017). The record reflects that the Petitioner did not submit a brief or additional evidence, and as discussed above, the regulations governing motions do not provide the Petitioner additional time to submit a brief or evidence; the motion must meet the applicable requirements when filed. The Petitioner's motion therefore did not establish that the underlying decision was based on an incorrect application of law or policy, nor was it supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS policy.

On appeal, the Petitioner asserts:

> The denial ignores and disregards the evidence the Petitioner submitted. The denial is incorrect on its assertions and fails to cite to the law that a Motion for Reconsideration does not need to prove new facts. Moreover, the denial states that no authority was cited which is unfounded because case law and applicable statutes supported the Motion to Reopen and Reconsider and were mentioned in the Motion.

As discussed, the Petitioner's motion did not cite to any authority and instead indicated that a brief would be submitted at a later date. The record of proceeding does not contain a brief submitted in support of the motion to reopen or motion to reconsider.

For these reasons, we find that the Director properly concluded that the Petitioner's filing did not meet the requirements of a motion to reopen or a motion to reconsider. Because the Petitioner established no error in the denial of the motions, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of S-G-E- Inc.*, ID# 2060649 (AAO Mar. 28, 2019)