U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-, INC.

DATE: MAY 2, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a convenience store, seeks to temporarily employ the Beneficiary as the President of 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 that the record did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity, or that the Petitioner's new office will support the Beneficiary in an executive or managerial position within one year of approval of the petition. We summarily dismissed the Petitioner's subsequent appeal because it did not include a statement in support of the appeal that specifically identified an erroneous conclusion of law or fact in the Director's decision.

The matter is now before us on a combined motion to reopen and reconsider. The Petitioner submits a brief and additional evidence addressing the Director's decision and the merits of its case.

Upon review, we will deny the combined motion.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision 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. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[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.

II. ANALYSIS

The issue in this matter is whether the Petitioner has submitted new facts supported by documentary evidence sufficient to warrant reopening its appeal, or established that our decision to summarily dismiss its appeal was based on an incorrect application of law or policy.

The regulations provide that 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). We summarily dismissed the appeal because the Petitioner did not submit a statement identifying any erroneous conclusion of law or statement of fact as a basis for the appeal, as instructed on the Form I-290B. The Form I-290B indicated that these materials were attached; however, nothing was submitted with the Form I-290B on appeal.

On motion, the Petitioner does not assert that our summary dismissal was incorrect. Instead, it states: "I am submitted [*sic*] form I-290B along with the following supporting documents. Please be advised that these documents were originally submitted with the petition. However, the officer reviewing the file failed to comprehend the significance of the partnership agreement as it relates to the beneficiary's executive responsibilities." The Petitioner does not assert that we misapplied any law or policy in our summary dismissal. Its argument on motion relates to the Director's decision, and not our summary dismissal. Therefore, the Petitioner has not met the requirements of a motion to reconsider our prior decision.

The Petitioner also has not submitted any new facts that would overcome our decision to summarily dismiss the appeal. The motion includes copies of partnership agreements that were originally submitted with the petition. However, these are not new facts. We will not consider the newly submitted brief discussing the merits of the case absent evidence that we summarily dismissed the appeal in error. The Petitioner has not provided such evidence or shown that the matter should be reopened.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-, Inc.*, ID# 2542780 (AAO May 2, 2019)