U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF QNNS- (USA) INC.

DATE: MAY 10, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, which sells safes, seeks to extend the Beneficiary's temporary employment as its president and chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director of the California Service Center denied the petition and we dismissed the subsequent appeal. We denied the Petitioner's motion to reopen and motion to reconsider finding the motions were filed untimely. The matter is now before us again on a motion to reopen and a motion to reconsider. 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 denying the petitioner's motion to reopen and motion to reconsider as untimely. Therefore, the issue in this matter is whether we properly denied the Petitioner's motions as untimely. On motion, the Petitioner asserts that an initial attempt to file the combined motions was rejected due to a clerical error and was scheduled for delivery on January 16, 2018 within the filing deadline. Therefore, the Petitioner claims we erred in not finding the delay in filing reasonable and beyond the Petitioner's control.

A review of the record confirms that our denial of the combined motions was not in error. The regulations require a motion be filed within 33 calendar days of the date that the unfavorable decision was served by mail. 8 C.F.R. §§ 103.5(a)(1)(i); 103.8(b). The filing date is the day USCIS receives the motion at the designated filing location, not the date the Petitioner mailed the motion or the date of scheduled delivery. 8 C.F.R. § 103.2(a)(7)(i). On December 12, 2017, we dismissed the Petitioner's appeal and served the unfavorable decision by mail. The decision stated that the Petitioner may file a motion within 33 days. USCIS received an improperly filed motion that was rejected on January 17, 2018, 36 days after the service date of the unfavorable decision. We then received the properly filed motion on February 5, 2018, which is 55 days after the service date of the

unfavorable decision. We do not find that the delay in filing was reasonable or beyond the control of the Petitioner.

The Petitioner has not provided new evidence on motion to establish that it had timely submitted the prior motion to reopen and motion to reconsider. Nor has the Petitioner stated that our decision to deny the motions 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 QNNS- (USA) Inc.*, ID# 1643011 (AAO May 10, 2018)