U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G- INC.

DATE: MAY 16, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an exporter and wholesaler of automobiles and automobile parts, seeks to continue the Beneficiary's temporary employment as its president under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 revoked the approval of the petition, determining that the Petitioner did not establish, as required, that it employs the Beneficiary in a managerial or executive capacity. The Petitioner subsequently filed a combined motion to reopen and reconsider accompanied by a brief and additional supporting evidence. The Director denied both the motion the reopen and the motion to reconsider, concluding that the Petitioner did not state new facts to warrant reopening nor cite to any pertinent precedent decisions to establish that the revocation decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy.

On appeal, the Petitioner contends that the Director did not adequately articulate or substantiate why the submitted evidence was insufficient to meet the Petitioner's burden of proof.

Upon *de novo* review, although the Director correctly denied the motion to reconsider, we find that the Director applied an incorrect standard to the Petitioner's motion to reopen and therefore erroneously denied the motion without considering the new facts and evidence submitted. Accordingly, we will remand the matter for entry of a new decision consistent with our discussion below.

I. ANALYSIS

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 combined 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

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). The Director denied the motion to reopen despite the Petitioner's submission of new evidence, finding that "this evidence does not meet the criteria for a motion to reopen as there appears to be no discovery of new evidence or changed circumstances." The Director cited to a precedent decision of the Board of Immigration Appeals (the Board), *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992), in support of this conclusion.

The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board's definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, the USCIS regulation does not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

Here, the Petitioner's motion to reopen included relevant new facts and an affidavit that had not previously submitted in the proceeding. The Director did not consider these new facts before rendering a decision due to her reliance on the Board's definition of "new." Accordingly, we will withdraw the Director's denial of the motion to reopen and remand the matter for entry of a new decision.

B. Motion to Reconsider

A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Upon review of the motion, we find that the Petitioner did not articulate a claim that the revocation decision was based on an incorrect application of law or policy. Therefore, the Director correctly denied the motion to reconsider.

II. CONCLUSION

The Petitioner's motion to reopen met the requirements specified at 8 C.F.R. § 103.5(a)(2). As the Director erroneously denied the motion to reopen, we will remand the matter for entry of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of A-G- Inc.*, ID# 3300081 (AAO May 16, 2019)