U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37894823

Date: MAY 22, 2025

Motion on Administrative Appeals Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a health and wellness supplement company, 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 field denied the petition concluding the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. The Director further determined the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of an approval of the petition. The Petitioner later filed an appeal that we dismissed.[2] The matter is now before us again on a combined motion to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20

[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.

[2] In dismissing the appeal, we determined the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year and reserved the other issue for denial. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). We continue to reserve the other basis for denial not analyzed in this motion decision.

I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In dismissing the Petitioner's appeal, we concluded it did not establish that the Beneficiary would be employed in an executive capacity within one year of an approval of the petition.[3] We reasoned that the Petitioner submitted a duty description for the Beneficiary that did not credibly demonstrate he would primarily perform executive-level tasks within the first year. We also indicated that his duty description included several non-qualifying operational tasks. We stated that the Petitioner did not sufficiently document what proportion of the Beneficiary's duties would be executive functions and what proportion would be non-qualifying operational tasks by the end of the first-year new office period. In addition, we discussed several discrepancies and ambiguities in the Petitioner's first year business plans, including insufficient investment and unrealistic hiring plans. As such, we concluded that the Petitioner did not sufficiently demonstrate the Beneficiary would be employed in an elevated position where he was primarily relieved from the non-qualifying operational tasks of the business and focused on the broad goals and policies of the organization within one year.

On motion, the Petitioner emphasizes its current operations, asserting that it commenced operations in July 2024 "with an official launch in October 2024." The Petitioner indicates that it generated sales of nearly $37,000 in its first few months of operation.[4] The Petitioner also asserts that it invested almost $106,000 in the new venture and established a network of 30 distributors, exceeding benchmarks in the wellness and beauty products industry. The Petitioner indicates that it engaged a third-party contractor to manage the packing, shipping, and logistics of its products and states that the Beneficiary oversees the day-to-day functioning of this contractor. The Petitioner explains that the Beneficiary will direct a "soft-launch event" in October 2024 where the new company will invite approximately 60 guests to generate buyer interest in its products leading its "strategic expansion into international markets." The Petitioner submits a "comprehensive description" of the Beneficiary's duties and responsibilities, emphasizing that he would be tasked with establishing the new company, developing strategic initiatives, and overseeing financial commitments. It asserts that while some of the Beneficiary tasks would be operational, he would mainly perform executive-level duties.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion.

The Petitioner submits evidence relating to its operations following the date the petition was filed and mainly dating after its response to the field's request for evidence (RFE) in July 2024, including asserted revenues from July through December 2024, evidence of commissions paid from June to October 2024, shipping documentation, invoices, meeting minutes, and other similar documentation significantly post-dating the time the petition was filed in April 2024.

[3] We only analyzed whether the Beneficiary would be employed in an executive capacity within one year, as the Petitioner did not assert that he would be employed in a managerial capacity in the United States.
[4] The petition was filed on April 5, 2024.

The Petitioner clearly indicated in section 1, item 12 in the L Classification Supplement to the Form I-129, Petition for a Nonimmigrant Worker, that this was a new office petition. As such, the field's adjudication and our adjudication now and previously on appeal, must be focused on whether the Petitioner submitted sufficient evidence to establish that, as of the date the petition was filed, it was more likely than not that the Beneficiary would be employed in an executive capacity within one-year of an approval of the petition.[5] Evidence reflecting the Petitioner's operations after the date the petition was filed is not relevant to establishing the Beneficiary's eligibility under a new office petition and it does not establish that the field's determination, or our conclusions on appeal, were incorrect. An applicant or petitioner must establish that he or she remains eligible for the benefit sought from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *Matter of Kazemi*, 19 I&N Dec. 49, 51 (BIA 1984) ("We have long held that an application for admission to the United States is a continuing application and admissibility is determined on the basis of the law and the facts existing at the time the application is finally considered.").

The Petitioner submits additional duties on appeal, including general percentages of time he would devote to categories of duties rather than percentages of time he would devote to daily tasks, such as him focusing 35% of his time on "strategic planning and business development" and 20% of his time on "financial oversight and investor relations." However, as discussed in our prior decision, the Petitioner did not submit duties including the percentages of time devoted to his daily tasks, more importantly the time he devoted to his executive-level duties as compared to non-qualifying operational tasks. As such, we will not accept new duties for the Beneficiary on motion, when we have already considered his proposed duties in our prior decision. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on motion. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); see also 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

Likewise, the Petitioner provides additional business plans and hiring projections different from those provided with the petition, including the Beneficiary engaging third party contractors for order fulfillment and organizing a client event in October 2024 as well as new hiring plans involving an operations and compliance coordinator and artificial intelligence agents and contractors. The Petitioner now states that it has invested $106,000 in the new venture, rather than the previously asserted $58,000 in inventory it proposed in support of the petition. However, again, our adjudication is limited to the Petitioner's stated business and hiring plans when the petition was filed. At the time of the field and our adjudication, the Petitioner provided insufficient business plans including discrepancies and ambiguities that did not sufficiently establish it would likely develop during the first year to support the Beneficiary in an executive capacity. For instance, we indicated that it was not

[5] In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed executive position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. See 8 C.F.R. § 214.2(l)(3)(v)(C).

clear how the Petitioner would onboard "100-300 independent contractors" within one year, while only paying out approximately $15,000 in commissions and incurring $19,000 in sales expenses. We further stated that it was not properly specified how the Petitioner would sell its health supplements in the United States without taking "the necessary steps to have its health and wellness products lines pass US Food and Drug Administration (FDA) inspection to be designated as US FDA compliant," as it asserted.

On motion, the Petitioner attempts to fully modify the record to establish its eligibility at a time well after the petition was filed. However, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). For example, the Petitioner's new modified hiring plans provided on motion in May 2025 have no relevance to the prior adjudications focused on a new office petition and business plans submitted in April 2024. In fact, the Petitioner's assertions on motion appear to indicate that its new venture is already regularly providing goods and services, leaving substantial uncertainty as to whether it is still eligible to file a new office petition, considering it claims to have commenced operations in July 2024, nearly one year prior to the date of this motion.[6] In sum, the evidence provided by the Petitioner related to its operations and plans well after the date the petition was filed does not demonstrate that our prior dismissal of the appeal was incorrect.

Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our prior 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As we have discussed, the Petitioner's assertions on appeal are largely based on its current operations and updated business plans, which we have noted, are not relevant to demonstrating the Beneficiary's eligibility under a new office petition. Beyond this, the Petitioner also cites to caselaw as a basis to establish that our prior dismissal was in error. For instance, the Petitioner points to *Matter of Z-A, Inc.* Adopted Decision 2016-02 (AAO Apr. 14, 2016) and asserts that with respect to new office petitions "a start-up petition may necessitate some operational involvement without detracting from overall executive function." However, *Matter of Z-A-, Inc.* did not involve a new office petition, but a publicly traded firm with $900 million in sales. This decision also indicated that while an L-1A function manager may use his or her business expertise to perform some operational or administrative tasks, he or she primarily must primarily manage an essential function. *Id.* The case cited by the Petitioner is

[6] We note that the Petitioner is free to file a new petition relevant to an existing U.S. petitioner doing business as of the date the petition was filed.

not relevant to the current matter. We applied relevant new office regulations requiring that the Petitioner establish the Beneficiary would more likely than not primarily perform executive-level duties within one year as of the date the petition was filed. We are not obligated to assess his potential eligibility based on evidence of its operations more than six months later.

The Petitioner further refers to *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) and *Matter of Christo's, Inc.*, 26 I&N Dec. 537 (AAO 2015) asserting that these cases support "that comprehensive crosswalks and detailed job duty letters are sufficient to establish an executive's role, even in the absence of minute-by-minute time allocation details." First, neither of the referenced cases discuss the sufficiency of a beneficiary's duties, or whether percentages of daily tasks are required. The Petitioner did not overcome the insufficiency of the Beneficiary's duties provided with the petition and in response to the RFE, which included several non-qualifying operational duties. For instance, the Beneficiary's duties discuss him reviewing social media performance and content, checking orders for accuracy, focusing on optimization of website functionality and user experience, and reviewing and confirming the accuracy of *all* [emphasis added] transactions in merchant accounts, bank accounts, inventory, and fulfillment platform tools. The Petitioner only vaguely states that he would spend 80% of his duties on executive-level tasks but it did not properly articulate these day-to-day executive-level tasks within the first year to substantiate this contention.

Lastly, the Petitioner asserts that "projections or second year operational plans are not germane to the standard and should not detract from the first-year achievements." Once again, we disagree with the Petitioner that the field's focus on the Beneficiary's second year duties was improper. Although we acknowledge the new office language indicates the Beneficiary must act primarily in an executive capacity within one year, the duties provided for his second year reflect tasks to be performed at the start of its second year of operation, during the first month of his second year of employment, and throughout this second year. Therefore, they were probative as to whether the Beneficiary would act primarily in an executive capacity towards the end of the one-year new office period and are more relevant to his potential eligibility than duties he would perform throughout the first year while developing the Petitioner's operations. Further, it is also reasonable to conclude that if the Beneficiary's duties during the second year are insufficient to demonstrate his qualifying executive capacity, then it is questionable that his first-year duties could establish this eligibility.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.