U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5646069

Date: NOV. 20, 2019

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner is a "new office"[1] that intends to renovate and sell homes. It seeks to employ the Beneficiary under the L-1A nonimmigrant classification as executive director.[2] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's qualifying work abroad in an executive or managerial capacity. We summarily dismissed the company's appeal.

The matter is before us again on the Petitioner's motion to reopen. The Petitioner submits additional evidence and requests more time to obtain further documentation.

Upon review, we will dismiss the motion.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). If a motion meets these requirements and overcomes the denial grounds of the prior decision, we may grant the filing.

II. THE PETITIONER'S MOTION

We found that the Petitioner's appeal did not allege an erroneous conclusion of law or statement of fact. *See* 8 C.F.R. § 103.3(a)(1)(v) (requiring summary dismissal of an appeal that does not identify its legal or factual basis). The appeal indicated that the Petitioner would submit a written brief or additional evidence within 30 days of the filing. But we did not receive any submission from the company during that period.

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[1] The term "new office" means an organization that has conducted business in the United States for less than a year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

[2] We refer to the offered position by its title listed on the Form I-129. In a letter, the Petitioner identified the job as "executive officer."

On motion, the Petitioner submits an affidavit from the Beneficiary and copies of U.S. Citizenship and Immigration Services (USCIS) notices to him and his family. The notices indicate USCIS' approval of applications to extend the nonimmigrant visa status of him and his family in the United States as visitors. This new evidence, however, does not overcome the grounds of our appellate dismissal. The evidence does not address the defects in the company's appeal.

The Beneficiary's affidavit states that, after the petition's denial, the Petitioner requested additional documentary evidence from its parent company in Venezuela regarding the nature of the Beneficiary's foreign experience. The affidavit states that, as of the motion's filing, the Beneficiary, who still remains in the United States, had not yet received the requested evidence. The Beneficiary blamed the delay on "the complicated situation that has arisen in Venezuela regarding logistic services, lack of electricity and low access to the internet." The Beneficiary stated that documents had been sent to him through a Venezuelan courier company and that he expected to receive them soon. The Petitioner requested an additional 30 days to submit the anticipated evidence.

Since the motion's filing more than seven months ago, however, this office has not received any further submissions from the Petitioner. Even if the company had sent us additional documentation, Department of Homeland Security regulations do not allow a movant seeking to reopen a proceeding to submit additional evidence after the motion's initial filing. *See* 8 C.F.R. § 103.5 (containing rules governing the filings of motions). We therefore could not have granted the Petitioner's request for additional time, nor considered any evidence submitted after the motion's filing.

The Beneficiary's affidavit also asserts that the Petitioner "was a victim of migratory fraud." The affidavit states that the petition's preparer misrepresented herself to the company as an attorney. The United States Court of Appeals for the Eleventh Circuit, which has jurisdiction over the proposed worksite in this matter, has suggested that poor legal performances by people who misrepresented themselves as attorneys can support claims of ineffective assistance of counsel. *See Montano Cisneros v. U.S. Att'y Gen.*, 513 F.3d 1224, 1227 (11th Cir. 2008) (holding that the Board of Immigration Appeals (BIA) abused its discretion in denying a motion to reopen involving a claim of faulty legal advice by a non-attorney). In cases involving claims of ineffective assistance of counsel, however, the Eleventh Circuit requires substantial compliance with certain procedural safeguards and proof that poor legal performances prejudiced claimants. *See Dakane v. U.S. Att'y Gen.*, 371 F.3d 771, 775 (11th Cir. 2004) (citing *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988)). Here, the Petitioner has not demonstrated that it complied with the *Lozada* safeguards or that the preparer's performance prejudiced it. We therefore cannot consider the claim.

Finally, the Petitioner asserts that the Beneficiary's approval notice establishes his qualifications to change his nonimmigrant status from visitor to L-1A worker as the petition requested. The Petitioner contends that USCIS denied the change-of-status request because, as of the petition's filing, the Beneficiary purportedly lacked valid nonimmigrant status.[3] "There is no appeal," however, from a change-of-status denial. 8 C.F.R. § 248.3(g). We therefore lack authority to review that portion of the Director's decision.

[3] The record indicates that, as of the petition's filing, the Beneficiary's application to extend his visitor's visa status was pending.

III. CONCLUSION

The evidence on motion does not establish that we summarily dismissed the Petitioner's appeal in error. We will therefore affirm our prior decision.

ORDER: The motion to reopen is dismissed.