U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-C-USAT-C-

DATE: OCT. 8, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an importer and seller of large format printers, seeks to continue the Beneficiary's temporary employment as its general manager 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 California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. Pursuant to the Petitioner's subsequent appeal, we withdrew the Director's decision and remanded the matter for further proceedings. The Director issued a new decision, again concluding that the Petitioner did not establish, as required, that it would employ the Beneficiary in a managerial or executive capacity. The Petitioner filed an appeal, which we summarily dismissed, noting that the Petitioner did not provide an appeal brief within 30 days of fling the appeal and finding that the Petitioner did not include a statement specifically identifying a factual or legal error in its Form I-290B, Notice of Appeal or Motion.

The matter is now before us on a combined motion to reopen and motion to reconsider. The combined motion is accompanied by a brief statement in which the Petitioner asserts that its previously submitted evidence shows that it meets all applicable eligibility requirements.

Upon review, we will deny the Petitioner's motion to reopen and motion to reconsider.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner

must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. MOTION TO REOPEN AND RECONSIDER

A. Motion Requirements

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 U.S. Citizenship and Immigration Services (USCIS) 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.

B. Analysis

The primary issue to be addressed in this decision is whether the Petitioner has: 1) offered new facts with supporting affidavits or other evidence to meet the requirements of a motion to reopen; or 2) made arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy with respect to the facts of this case.

In support of this combined motion, the Petitioner states that it incorrectly marked Box 1.b. at Part 2 of the Form I-290B, thereby indicating that it intended to submit a brief within 30 days of filing. The Petitioner contends that it did not, in fact, intend to provide a supporting legal brief as indicated and states that it intended to mark Box 1.c. at Part 2 of the Form I-290B, thereby showing that it would not submit a brief or additional evidence.

While we acknowledge the Petitioner's error at the time of filing the appeal, the error itself was not the basis for the dismissal of the appeal. The Petitioner is not required to provide a brief and/or additional evidence to support the appeal, nor would we dismiss an appeal based solely on the lack of a brief or additional evidence, regardless of the box that a petitioner marks on the appeal form. The chief basis for our summary dismissal of the appeal in this case was the lack of a statement specifically identifying a factual or legal error in the Director's decision. In other words, when a petitioner provides such a statement, regardless of which box they mark or whether they offer supporting brief or additional evidence, we consider the merits before us.

Here, the Petitioner did not offer a cogent argument pointing to a specific error in the Director's decision, therefore warrant that the appeal be summarily dismissed. Likewise, the Petitioner's current submission lacks a substantive basis for reopening or reconsideration. Namely, the Petitioner offers a statement titled "Brief," wherein it asks us to: 1) consider its prior submission of the first Form I-290B as complete without a supplemental brief or evidence; and 2) refer to its prior submissions as evidence that it met "all requirements" for this visa classification. Thus, the Petitioner does not offer new facts to warrant reopening of our decision to summarily dismiss the appeal, nor does it make arguments that point to a legal or factual error in that decision.

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. Because the Petitioner has not shown proper cause for reopening or reconsideration, it has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of X-C-USAT-C-*, ID# 5645294 (AAO Oct. 8, 2019)