U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06844493

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, an importer/exporter of health supplements and other merchandise, seeks to continue the Beneficiary's temporary employment as its president and general manager 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 Director of the Vermont Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity. The Petitioner filed an appeal stating that a brief and/or additional evidence was attached, but in fact no such materials accompanied the appeal form. Accordingly, the Director summarily dismissed the appeal in accordance with 8 C.F.R. § 103.3(a)(1)(v), which provides for the summary dismissal of an appeal if the appellant fails to specifically identify any erroneous conclusion of law or statement of fact for the appeal. The Petitioner filed a combined motion to reopen and reconsider, along with some materials on the production and commercialization of food supplement products, the Petitioner's organizational chart, and the Beneficiary's job duties.

A motion to reopen must state new facts and be supported by 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.

We dismissed the combined motion, pointing out that it incorrectly focused on the Director's denial of the petition rather than our summary dismissal of the appeal. In dismissing the motion to reopen we found that the Petitioner did not provide new facts supported by documentary evidence that addressed our previous decision to summarily dismiss the appeal. In dismissing the motion to reconsider we found that the Petitioner had not identified any incorrect application of law or policy in our summary dismissal decision. We concluded that the Petitioner had not overcome the grounds for the appellate dismissal.

The matter is now before us on a second combined motion to reopen and reconsider. The Petitioner asserts that the previous decisions issued by the Director and by this office were legally erroneous because the record establishes that the Beneficiary will be employed in a managerial or executive capacity. The Petitioner submits new evidence in the form of an approval notice from the Nebraska Service Center showing that its immigrant petition on behalf of the Beneficiary, seeking to employ him in the status of a multinational executive or manager under section 203(b)(1)(C) of the Act,[1] was recently approved. According to the Petitioner, since the Nebraska Service Center found that the Beneficiary will be working in a managerial capacity as the Petitioner's president and general manager, we and the Vermont Service Center misapplied governing law and policy by not approving the nonimmigrant petition as well. We disagree.

Regardless of the Nebraska Service Center's decision on the immigrant petition, the issues before us in the current combined motion to reopen the instant proceeding and reconsider our previous decisions on the nonimmigrant petition are whether we incorrectly applied the governing law or policy, or failed to take new facts and evidence into account. We note that the approval of the immigrant petition by the Nebraska Service Center post-dated our summary dismissal of the appeal of the nonimmigrant petition's denial based on the Petitioner's failure to specifically identify any erroneous conclusion of law or statement of fact in the Director's decision. The Petitioner has offered no explanation or excuse for its failure to submit any legal rationale or evidence in support of its appeal. Thus, the Petitioner has still not demonstrated that our original decision to summarily dismiss the appeal was erroneous.

For the reasons discussed above, the Petitioner has not shown proper cause for reopening or reconsideration.

ORDER: The motion to reopen is dismissed.

FURTHER MOTION: The motion to reconsider is dismissed.

[1] The receipt number of the Form I-140, Immigrant Petition for Alien Worker, is [redacted]