U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-USA, LLC

DATE: OCT. 29, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a plastics packaging manufacturer, importer, and wholesaler, seeks to temporarily employ the Beneficiary as general manager 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 Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the new office would support the Beneficiary in a managerial or executive position within one year of the petition's approval. On appeal, the Petitioner disputes the ground for denial, claiming that the new office would support the Beneficiary in a managerial capacity within one year of the petition's approval.

The Petitioner filed a combined motion to reopen and reconsider the Director's decision. The Director denied the combined motion based on these findings: (1) the motion did not meet the requirements of a motion to reopen because it did not include new facts that established the Beneficiary's eligibility; and (2) the motion did not meet the requirements of a motion to reconsider because the Petitioner did not state a clear reason for reconsideration, nor did it provide any precedent decision to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy.

On appeal, the Petitioner asserts that the Director's decision on motion misapplied applicable law and regulations, and that its motion was supported by additional evidence regarding the Beneficiary's duties. It also asserts that the Director's decision denying the underlying petition was erroneous. The denial of the underlying petition, however, is not properly before us on appeal. The Petitioner did not appeal the initial denial before the 33-day deadline set by regulation (8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b)). The Petitioner's appeal of the motion denial is timely, but that motion denial did not reset the clock to appeal the underlying decision.

[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.

As a result, the matter before us on appeal is a decision on the Petitioner's combined motion, rather than the merits of the underlying petition. The only issue before us is whether the Director properly found that the motion did not meet applicable requirements. We will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

A. 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). In the first denial notice, the Director stated that it appeared that the Beneficiary will "primarily assist with the day-to-day non-supervisory duties" of the Petitioner and that the Beneficiary would not supervise professional employees. On motion, the Petitioner submitted a letter from the Petitioner containing an expanded description of the Beneficiary's proposed duties in the United States. The Petitioner indicated that the letter was intended to "clarify the proposed duties and responsibilities of the Beneficiary."

In denying the motion, the Director determined that the Petitioner did not allege new facts on motion. However, the letter from the Petitioner constitutes "new facts" relating to the issue of whether the new office would support the Beneficiary in a managerial position within one year of the petition's approval. Therefore, the Director should have reviewed the motion to reopen on its merits. We will withdraw this portion of the Director's decision and remand the matter to the Director to review the merits of the Petitioner's motion to reopen.

B. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* As detailed in the Director's decision denying the motion, the Petitioner failed to satisfy these requirements. Therefore, the Director properly denied the motion to reconsider.

In sum, the Director did not address the merits of the motion to reopen despite the new facts presented on motion. We are remanding the matter so the Director may make the initial determination as to whether the new evidence overcomes the grounds for denial.

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 F-USA, LLC*, ID# 6407463 (AAO Oct. 29, 2019)