U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16665886

Date: SEPT. 13, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, an event management company, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] 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, concluding that the record did not establish, as required, that the Beneficiary will be employed in the United States in a managerial or executive capacity. The Director granted the Petitioner's combined motion to reopen and reconsider and affirmed the denial of the petition. We dismissed the Petitioner's appeal as well as its subsequent motion to reconsider.[2] The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the Petitioner's motion to reopen and reconsider.

II. ANALYSIS

The issue to be addressed in this decision is whether the Petitioner has offered new relevant facts supported by credible evidence or made legal arguments establishing that our decision to dismiss the prior motion to reconsider was based on an incorrect application of law or USCIS policy with respect

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period May 7, 2015 to May 6, 2016. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

[2] In our prior decision assessing the Petitioner's motion to reconsider, we determined that in our decision on appeal we incorrectly decided to treat the Director's prior decision as a motion dismissal when, in fact, the Director granted the motion and affirmed the denial of the petition, "thereby effectively incorporating the June 2017 denial into the May 2018 [motion] decision." We therefore addressed the issues raised in the initial denial. However, because the Petitioner did not establish eligibility, we concluded that the petition would remain denied.

to the facts of this case. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, May 2016) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. As such, we will examine any new facts and supporting evidence that pertain to the dismissal of the prior motion and we will consider arguments establishing that our prior decision was based on a misapplication of law or USCIS policy.

A. Motion to Reopen

As noted above, a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

In the matter at hand, the Petitioner does not offer new facts and restates, verbatim, portions of the brief that was submitted in support of the prior motion. As such, the Petitioner has not met the requirements of a motion to reopen and pursuant to 8 C.F.R. § 103.5(a)(4), the motion must be dismissed.

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As discussed below, this motion does not meet these requirements.

In our decision, we identified notable evidentiary deficiencies concerning the Beneficiary's job description. Namely, we noted that although several job duties were listed both in the original and in a subsequent job description, the Petitioner provided inconsistent time allocations, increasing the time spent on certain duties while decreasing time spent on others, adding new duties that had not been listed in the original job description, and assigning 45% of the Beneficiary's time to working with a purchasing manager and sales manager, yet providing no evidence to show that either of these positions had been filled in May 2016, when this petition was filed.

We also questioned whether the Petitioner was adequately staffed at the time of filing and described what we deemed to be "very significant and material changes to the Petitioner's claimed organizational structure." Namely, we pointed to inconsistencies between the Petitioner's claim in 2017 about employing an administrative manager, a wedding planner, and a procurement coordinator since April 2015 and the Petitioner's 2015 tax return, which shows that no salaries were paid in 2015, and its 2016 quarterly tax returns, which showed that the Beneficiary was not paid prior to March 2016 and that the procurement coordinator and administrative manager were first compensated in June 2016, while payments to a wedding coordinator did not start until the last quarter in 2016.

In addition, we pointed to the Petitioner's flawed reasoning and lack of an authoritative source to support the assertion that the Beneficiary's subordinates are professional employees because their

"duties are professional."[3] Furthermore, we observed that the "the petitioning entity appears to be a side venture that the Beneficiary operates from a convenience store owned by a separate company, [redacted] which the Beneficiary incorporated in late 2015." We noted that instead of addressing the Director's concerns about [redacted]'s relation to the petitioning entity, the Petitioner merely asked the Director to "disregard" [redacted] despite the Petitioner's unsolicited submission of documents regarding this very entity.

In sum, we provided a comprehensive analysis of the Petitioners claims and submissions and explained precisely how we reached an adverse conclusion.

On motion, the Petitioner seeks to diminish the significance of the inconsistencies between the two percentage breakdowns, focusing on the "narrow margin" of one inconsistency, while referring to other inconsistencies as evidence that the Petitioner had undergone "some restructuring and reorganization" or that added job duties were merely "minor adjustments intended to add further elaboration and description." However, the Petitioner does not claim or establish that we misinterpreted the facts or misapplied the law or USCIS policy in assessing the evidence. Likewise, although the Petitioner now seeks to address the Director's concern regarding its business relationship with [redacted] the Petitioner has not established that our finding concerning its prior failure to address this issue was incorrect.

As indicated earlier, the review of any motion is narrowly limited to the basis for the prior adverse decision. In this instance, the prior adverse decision was our September 2020 decision, where we determined that the Petitioner failed to address certain evidentiary findings made by the Director. The time to address the Director's findings was either on motion before the Director or on appeal. The purpose of the instant proceeding, however, is to correct any factual or legal errors made in the decision that immediately preceded the motion that is currently before us, not to revisit matters the Petitioner had the opportunity to address in earlier proceedings. Although the Petitioner claims that "the Service has never fully considered the record as a whole" and has overlooked "the scope and nature of the business," the Petitioner has not specifically identified a factual or legal error in our prior decision. Therefore, the Petitioner has not met the requirements of a motion to reconsider.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the basis for dismissal of the prior motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] To determine whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."