U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10507561

Date: SEPT. 15, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, which distributes hair care products manufactured by its foreign parent company, seeks to continue the Beneficiary's temporary employment as it 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 California Service Center denied the petition, concluding that the record did not establish that the Beneficiary was employed abroad, and will be employed in the United States, in a managerial capacity. We dismissed the Petitioner's appeal from the decision. 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 combined motion.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. LAW

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.

III. MOTION TO REOPEN

On motion, the Petitioner does not directly address the requirements of a motion to reopen or identify any new facts that it seeks to introduce into the record. The Petitioner submits 11 numbered exhibits, most of which are copies of documents that the Petitioner previously submitted, while the rest are copies of correspondence (such as filing receipts and approval notices) relating to prior filings. Therefore, the exhibits submitted on motion do not introduce new facts into the proceeding.

Because the motion does not include new facts with corroboration, it does not meet the requirements of a motion to reopen.

IV. MOTION TO RECONSIDER

For the motion to qualify as a motion to reconsider, the Petitioner must show that our appellate decision contained errors of fact, law, or policy that affected the outcome of that decision. In dismissing the Petitioner's appeal, we agreed with the Director's assessment that the job descriptions provided for the Beneficiary's positions abroad and in the United States lacked sufficient details. On motion, the Petitioner repeats these job descriptions, but repeating information already in the record does not establish that we erred in our appellate decision. The Petitioner does not claim that we materially misquoted or omitted information from those job descriptions in our prior decision.

In our appellate decision, we stated the following with regard to the Beneficiary's position abroad:

> [T]he Petitioner provided few credible specifics and documents to sufficiently substantiate the Beneficiary's daily tasks, including the hiring, compensation, safety, employee training, marketing, and accounting policies he planned and directed. . . . The Petitioner has not submitted a sufficiently detailed duty description describing the Beneficiary's actual day-to-day managerial level duties abroad or which credibly establishes that he devoted his time primarily to qualifying tasks.

On motion, the Petitioner acknowledges our conclusions but does not rebut them, stating:

> As noted in your deni[al] letter, you noted there were few credi[]ble specifics and documents to sufficiently substantiate the Beneficiary's daily tasks, including the

> hiring, compensation, safety, employee training, marketing, and accounting policies. It is quite eviden[t] that Beneficiary was highly recruited by the parent company because of experience and qualification, he has [ac]quired through his managerial tasks.

In the above passage, the Petitioner does not explain how the second sentence follows from the first. The claimed reasoning underlying the Beneficiary's recruitment does not refute our conclusions about "the Beneficiary's daily tasks." Elsewhere on motion, the Petitioner asserts that the Beneficiary's responsibilities included "[r]esearch and development," although the Beneficiary's job description (quoted in full on appeal and again on motion) does not mention research and development.

Regarding the Beneficiary's position in the United States, the Petitioner states: "Although [the Beneficiary has been] acting as manager/director there has not been . . . enough time for Beneficiary to establish a specific manager/director status. Once [the petition] is approved, he will act [in a] managerial capacity for [the] US subsidiary." When a petitioner files a petition for an L-1A manager, the U.S. entity must already be in a position to employ the beneficiary in a primarily managerial capacity. The only exception to this rule is a "new office" petition, the approval of which grants the beneficiary one year to develop the new U.S. office to an extent that it will support a primarily managerial position. See 8 C.F.R. § 214.2(l)(3)(v)(C). If the U.S. office is not ready to support a primarily managerial position after one year, then this deficiency is grounds for denying an extension, not for granting one.

In this instance, a previous extension had already been granted after the initial one-year new office period; the Beneficiary had been an L-1A nonimmigrant for longer than one year when the present petition was filed. By stating that "there has not been . . . enough time for Beneficiary to establish a specific manager/director status," the Petitioner essentially stipulates disqualifying circumstances, and contradicts the assertion in the same brief that it has "sufficiently established that . . . the Beneficiary's position at the U.S. subsidiary has been and will continue to be, primarily managerial in nature."

Regarding the earlier filings, the Petitioner states: "We do not know why the first two petitions were approved." The two approved petitions are not part of the file before us, and therefore we cannot determine whether the facts in that petition warranted its approval. An adjudicator's fact-finding authority should not be constrained by any prior petition approval, but instead, should be based on the merits of each case.[1] The prior approval of a visa petition does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa.[2] Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

The Petitioner has not shown that our appellate decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and must be dismissed.

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[1] USCIS Policy Memorandum PM-602-0151, Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status 3 (October 23, 2017), http://www.uscis.gov/legal-resources/policy-memoranda.

[2] See, e.g., Royal Siam Corp. v. Chertoff, 484 F.3d 139, 148 (1st Cir. 2007); Matter of Church Scientology Int'l, 19 I&N Dec. 593, 597 (Comm'r 1988).

V. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of its appeal. The motion to reopen and motion to reconsider will be denied for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.