U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18028581

Date: SEP. 16, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a company engaged in the production and sale of lighting products, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A classification for nonimmigrant intracompany transferees.[1] Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition, concluding the record did not establish, as required, that the new office developed to an extent that it was able to support a managerial and executive position. More specifically, the Director concluded that the Petitioner had not established that: (1) it was doing business as defined by the regulations; (2) the new office was financially able to support the Beneficiary's intended position; and (3) the Beneficiary would be employed in a managerial or executive capacity. The Director also determined that the Petitioner did not establish that the Beneficiary's services in the United States would be temporary and that she had maintained proper immigration status. The Petitioner later filed an appeal that we dismissed. The matter is before us again on a motion to reconsider.[2]

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[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 4, 2019 until January 3, 2020. 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] Despite indicating on the first page of the Form I-290B, Notice of Appeal or Motion, that it was represented by counsel and that a G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, was attached, no such completed form was included with the motion. As such, in May 2021, we sent correspondence to the Petitioner notifying them that we considered them to be self-represented. In addition, the Form I-290B specific to this motion was signed by an unidentifiable signator and no full legal name or position title was included in section 4, part B, items 3 and 4. We note that the instructions for the Form I-290B clearly state that, "if you are completing Section B as an authorized signatory of a business or organization, you must also provide your full legal name and title." The lack of a name and title in section 4, part B is notable since the Form I-129, Petition for a Nonimmigrant Worker, was signed by the company's president, while the later appeal was signed by the Beneficiary, the asserted chief executive officer of the Petitioner. Neither of these signatures matched that included in the most recent Form I-290B. Therefore, in any future filings, the Petitioner must fully complete any required signatory sections and clearly document the name and title of the officer signing of behalf of the company. Failure to do so may lead to the rejection of any such filing.

On motion, the Petitioner does not contest our conclusion on appeal that the Beneficiary would not be employed in an executive capacity.[3] The Petitioner contends that we erred by not reviewing and withdrawing the Director's determination that the Beneficiary violated her B-2 and L-1A nonimmigrant status.

Upon review, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Upon review, the Petitioner has not met the requirements for a motion to reconsider. As discussed, the Petitioner does not contest our conclusion that the Beneficiary is ineligible for the benefit sought, but only contends that we erred in not reviewing and withdrawing the Director's determination that the Beneficiary violated her B-2 and L-1A nonimmigrant status. However, we have no jurisdiction over the issue of whether the Beneficiary violated her nonimmigrant status, as our review is limited to whether she is eligible for the benefit sought. The regulations state that, while a petitioner's request to classify a beneficiary as an L-1A nonimmigrant and to extend a beneficiary's stay are combined in the Form I-129, a separate determination must be made by the director on each issue. 8 C.F.R. § 214.2(l)(15)(i). Here, the Director made a separate decision that the Beneficiary was not eligible for an extension of stay because she had violated her prior nonimmigrant status. The regulations provide that there is no appeal of a denial of an extension of stay filed on a Form I-129 Petition for a Nonimmigrant Worker. *See* 8 C.F.R. § 214.1(c)(5). The Director's finding that the Beneficiary does not qualify for a change and extension of status cannot be appealed, nor can the Director's determination that she violated her previous nonimmigrant status.

We acknowledge that the Petitioner attached several of our non-precedent decisions on motion and asserts that these provide a legal basis for our review of the Director's conclusion that the Beneficiary violated her previous nonimmigrant status. However, none of these cases establish our clear jurisdiction over this issue directly related to the Beneficiary's extension of stay. In fact, each non-precedent decision referenced by the Petitioner addresses each beneficiary's eligibility for the benefit

[3] We did not analyze whether the Beneficiary would be employed in a managerial capacity in the United States, as the Petitioner only asserted that she would be employed in an executive capacity. Further, we reserved the other grounds for denial articulated by the Director, as our conclusion that the Beneficiary would not be employed in the United States in an executive capacity was dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

sought, our only jurisdiction on appeal. Further, we note that a motion to reconsider must be supported by pertinent precedent or adopted decisions, statutory or regulatory provision, or statements of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. However, the Petitioner's motion to reconsider provides no such legal basis for our jurisdiction over a Director's conclusion that the Beneficiary had violated her nonimmigrant status.

Therefore, the Petitioner has not met the grounds for a motion to reconsider as it has not cited applicable law to establish that our prior determination that the Beneficiary was not eligible for the benefit sought was an incorrect application of law of policy. The Petitioner has also not demonstrated the Beneficiary's eligibility for the benefit sought. Again, we may only grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. *See* 8 C.F.R. § 103.5(a)(3). The motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.