U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17591341
Date: SEP 20, 2021

Motion of Administrative Appeals Office Decision

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

The Petitioner, a manufacturer of cleaning products, seeks to continue beneficiary's classification as an intra-company transferee in a managerial capacity. The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not provide evidence that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. The Petitioner filed an appeal, which we dismissed on conclusion that the Petitioner did not establish that the beneficiary will be employed in a managerial capacity. The Petitioner filed a first motion, which was dismissed for not meeting the requirements of a motion. The petitioner filed a second motion, which was dismissed as untimely.

The matter is now before us on a third motion. Upon review, we will dismiss the motion.

In these proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

A motion to reopen must state new facts 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, be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

A motion to reopen must be filed within 33 days of the relevant decision. A late filing may be excused on discretion where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b).

The primary issue in the current matter is whether the Petitioner has established that our decision to dismiss the second motion as untimely was based on an incorrect application of law or, as evidenced by new facts in the case.

The Petitioner asserts that the second motion was untimely because USCIS erred in handling the first motion, and that USCIS did not consider the legal brief when determining discretion for the late filing of the second motion.

First, upon review, USCIS did not err in handling the first motion. The Petitioner presents insufficient evidence that the second motion was untimely due to incorrect handling of the first motion. The decision for the first motion was mailed according to the information provided in Part 1 of the Form I-290B, Notice of Appeal or Motion. Additionally, a brief for the first motion was submitted to the lockbox subsequent to the filing of the Form I-290B. When filing a motion to reopen or reconsider, the brief is to be submitted together with the Form I-290B, Notice of Appeal or Motion. *See* 8 C.F.R. § 103.5(a)(1)(iii); *see also* Form I-290B, Notice of Appeal or Motion, Instructions at 6 (rev. 5/17/2018). A submission to the Lockbox without a filing fee and properly completed Form I-290B will be rejected. 8 C.F.R. § 103.2(a)(1).

Secondly, USCIS considered the information provided with the filing of the second motion. A motion to reopen must state the new facts to be considered and be supported by affidavits or evidence. 8 C.F.R. § 103.5(a)(2). The details addressed in the second motion related to factors prior to the decision of the first motion rather than an explanation for untimely filing of the second motion. As well, the Petitioner did not submit relevant evidence to explain the untimely filing of the second motion.

We find no reason to disturb our previous findings regarding the Director's decision that the Petitioner did not provide sufficient evidence that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. The appellant repeats arguments that we previously considered, and a motion is not an opportunity to reargue previous arguments or to raise new arguments that could have been offered before. Disagreement with the result is also not a basis for reconsideration. *See Matter of O-S-G*, 24 I&N Dec. 56, 60 (BIA, 2006).

As the Petitioner did not meet the requirements of a motion to reopen or a motion to reconsider, we will dismiss the motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.