U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33687006

Date: SEPT. 24, 2024

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner is an information technology consulting company that seeks to temporarily employ the Beneficiary as the executive partner/controller of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 Petitioner did not establish that the Beneficiary is qualified to perform the intended services in the United States or that he has been employed abroad in a managerial or executive capacity for one continuous year in the three years preceding the filing of the petition.[2] We then considered this matter on appeal, which we dismissed. In doing so, we listed the relevant eligibility requirements, highlighting, as the Director did, that the regulations applicable to L-1A new office petitions allow for the transfer of foreign employees who have been employed abroad in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

We noted that the Petitioner neither claimed nor established that the Beneficiary was employed abroad in a managerial capacity as defined at section 101(a)(44)(A) of the Act. And while we acknowledged the Petitioner's claim on appeal that the Beneficiary, and all the foreign entity's software engineers, hold "executive positions" because they are critical to its ongoing activities, we determined that the job duties associated with the Beneficiary's position as a software engineer are consistent with his job title and do not include the higher-level responsibilities reflected in the statutory definition of "executive capacity." *See* section 101(a)(44)(B) of the Act. We pointed to the Petitioner's repeated references to the Beneficiary's employment abroad as that of a "specialized knowledge professional" and informed the Petitioner that the Beneficiary is not eligible for transfer to a new office in the L-1A classification if

[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).

[2] We relied on the Beneficiary's employment abroad as the dispositive issue on appeal. We therefore reserved the Petitioner's appellate arguments regarding the Beneficiary's qualifications to perform the intended services in the United States. *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).

his employment abroad was in a specialized knowledge capacity. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, the Petitioner has not established that it has met this burden.

First, we will address the motion to reopen, which must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In the present matter, the Petitioner asserts that it did not previously inform that each of the foreign entity's software engineers is "assigned to a specific client." However, this information is not relevant to our decision, which was based on the determination that the Petitioner did not establish that the Beneficiary met the regulations applicable to L-1A new office petitions, which require a showing that the beneficiary of such a petition was employed abroad in a managerial or executive capacity for at least one continuous year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). Because the Petitioner has not offered new facts or evidence addressing our basis for dismissing the appeal, it has not established that a reopening of our prior decision is warranted.

Next, we will address the Petitioner's motion to reconsider. A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner asserts that we "neglected to classify the beneficiary's position as managerial or supervisory" thus indicating that we should have contemplated the Beneficiary's position abroad under the statutory definition of "managerial capacity." *See* section 101(a)(44)(A) of the Act. However, the purpose of this motion is to consider legal arguments as to whether our decision was correct based on evidence in the record at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). As noted above, the Petitioner did not previously claim or offer evidence to show that the Beneficiary was employed abroad in a managerial capacity and we therefore need not consider this claim, which has been raised for the first time on motion.

The Petitioner also claims that it provided "probative, verifiable evidence" establishing its eligibility. We disagree. As previously stated, we dismissed the appeal because the Petitioner claimed that the Beneficiary was employed abroad in a specialized knowledge capacity rather than in a managerial or executive capacity as required of L-1A new office petitions. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). The Petitioner has not specified which of its prior submissions establishes that our determination was based on an incorrect application of the relevant regulatory provisions.

Lastly, the Petitioner cites precedent case law which appears to involve issues concerning the admissibility of evidence in deportation proceedings. However, the instant matter is not a deportation proceeding, nor does it concern the admissibility of evidence. As noted earlier, the issue here is whether we correctly dismissed the appeal based on the determination that the Petitioner did not provide sufficient evidence showing that it met the requirement at 8 C.F.R. § 214.2(l)(3)(v)(B), which pertains to L-1A new office petitions. As the Petitioner has not explained how the cited cases are relevant to the issues in this matter, the Petitioner's citation of those cases does not establish that we failed to correctly apply the law or policy based on the evidence before us at the time of the decision.

In sum, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.