U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20924849

Date: JUN 03, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Multinational Executive or Manager

The Petitioner describes itself as a franchised Indian vegetarian restaurant and seeks to permanently employ the Beneficiary as a human resources manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This employment-based immigrant classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the United States employer and the foreign employer have a qualifying relationship. The Petitioner filed a motion to reconsider, which the Director dismissed. We dismissed the Petitioner's subsequent appeal, determining that the Director properly dismissed the motion to reconsider because the record did not establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. The Petitioner has since filed three combined motions to reopen and reconsider. We dismissed the first combined motion as untimely filed and dismissed the second and third motions after determining that the Petitioner did not meet the requirements of a motion to reopen or reconsider.

The matter is now before us on a fourth combined motion to reopen and motion to reconsider. The Petitioner submits additional evidence in support of its claim that it has a qualifying relationship with the Beneficiary's foreign employer and states that this office "has to reopen the original decision to deny." The Petitioner further claims that "a delay of a day should not result in the denial of a petition" when the record establishes that the underlying petition was improperly denied.

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 combined motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect

application of law or U.S. Citizenship and Immigration Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issues to be addressed are whether the Petitioner has (1) offered relevant new facts, supported by credible evidence, to warrant reopening; and (2) established that our decision to dismiss the prior combined motion to reopen and reconsider was based on an incorrect application of law or USCIS policy.

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 legal arguments that pertain to our September 23, 2021 decision dismissing the Petitioner's third combined motion to reopen and reconsider.

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).

The Petitioner states that it is offering new facts to establish that the initial petition was incorrectly denied. The only new evidence the Petitioner offers in support of the motion is a record obtained from the U.S. Patent and Trademark Office's (USPTO) Trademark Electronic Search System indicating that the service mark '[redacted]' the name used by the Petitioner's restaurant, is owned by the United Arab Emirates entity that previously employed the Beneficiary abroad. In its brief, the Petitioner maintains that "the new evidence gives credence to the fact that the overseas entity had both ownership and control of the U.S. entity." While this evidence is "new" in that the Petitioner has not previously submitted a copy of the record from the USPTO website, the record contains other evidence which indicates the ownership of the [redacted]' service mark and the Petitioner's permission to use that name as a franchisee. Such evidence was already considered in evaluating the qualifying relationship between the Petitioner and the Beneficiary's foreign employer and found to be insufficient to establish the requisite common ownership and control.

Accordingly, we conclude that the Petitioner has not presented new facts that warrant reopening the proceeding or which would warrant reversal of the denial of the underlying petition. The motion to reopen must be dismissed.

B. Motion to Reconsider

In order to meet the requirements of a motion to reconsider, the Petitioner must establish that our September 2021 decision dismissing its third motion was based on an incorrection application of law or policy. 8 C.F.R. § 103.5(a)(3). As noted above, we dismissed the Petitioner's appeal and affirmed the Director's determination that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. We dismissed the Petitioner's first combined motion to

reopen and reconsider because it was untimely. In subsequent motions, the Petitioner has requested the reopening of the initial combined motion to reopen and reconsider. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that failure to timely file a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner.

In its third motion, the Petitioner repeated a previous assertion that even if its initial motion was untimely filed, the untimeliness was due to the COVID-19 pandemic. We acknowledged the Petitioner's assertion but emphasized that it did not address our previous finding that there was a lack of evidence showing that the delivery of specific documents from the foreign entity was delayed due to COVID-19. Likewise, the Petitioner did not offer evidence to support the claim that the untimely filing of its initial motion was "solely due" to difficulties that resulted from the COVID-19 pandemic. Further, although the Petitioner asserted that the untimeliness of its motion was "insignificant" and that a favorable exercise of discretion was therefore warranted, we concluded that there is no regulatory provision that would allow us to excuse the untimely filing of a motion to reconsider. *See* 8 C.F.R. § § 103.5(a)(1)(i). Accordingly, we dismissed the third Petitioner's third combined motion.

In the brief submitted in support of the current motion, the Petitioner states "We concede that there is no regulatory provision which would allow the Service to excuse an untimely motion to reconsider and accordingly withdraw our Motion to Reconsider." On the Form I-290B, Notice of Appeal or Motion, the Petitioner appears to repeat its previous claim that the delay in filing was nevertheless "insignificant," as it notes that "the delay of a day should not result in the denial of the petition." Again, the regulations grant us the discretion to excuse the late filing of a motion to reopen, but only in cases where it is demonstrated that the delay was reasonable and beyond the control of the Petitioner. We have addressed the Petitioner's explanations regarding the delay in filing at length in our previous decisions and explained why the Petitioner did not demonstrate that the delay in filing its initial motion was reasonable and beyond its control. The Petitioner does not further address the late filing in the current motion and has not established that we incorrectly applied the law or USCIS policy in dismissing its third combined motion.

In light of the above, the Petitioner has not established that we misinterpreted the facts or misapplied the law or USCIS policy dismissing the previous motion. 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 combined motion to reopen and motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.