U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20633255

Date: MAY 24, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

At the time of filing, the Petitioner, an operator of a liquor store, sought to permanently employ the Beneficiary as its "executive" under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. A lengthy procedural history followed the denial, and the matter came before us on multiple appeals and motions.[1] In our latest decision, we addressed the arguments that were made in support of a motion that we previously determined was untimely, concluding that the motion did not merit a favorable decision because it did not meet the regulatory requirements of a motion to reopen. The matter is now before us on a motion to reopen and reconsider.

An applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the Petitioner's motion to reopen and reconsider and the petition will remain denied.

As a preliminary matter, we note that motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. As previously noted, the matter currently before us is the fifth motion.

Furthermore, a motion may only be filed by an affected party. *See* 8 C.F.R. § 103.5(a)(1)(i) (when a motion is filed by an affected party, the official having jurisdiction may reopen the proceeding or reconsider the prior decision, if proper cause is shown). An affected party means "the person or entity

[1] After the Director denied the petition, the Petitioner filed an appeal, which we dismissed, and the Petitioner filed the first motion to reopen and reconsider that we also dismissed. The Petitioner then filed an appeal, which we rejected; this prompted another motion to reopen and reconsider, which we dismissed. In December 2020, a motion to reopen was filed. Although we initially dismissed that motion as untimely, upon further review we reopened the matter on service motion and issued a new adverse decision which prompted the current motion.

with legal standing in a proceeding." 8 C.F.R. § 103.3(a)(1)(iii)(B). In the case of an employment-based immigrant visa petition, the affected party is generally the petitioner, the prospective employer that filed the petition.

The motion to reopen and reconsider that is before us was filed by [redacted], rather than the entity that originally filed the Form I-140 petition.[2] In the corresponding legal brief, counsel on behalf of the filing entity explains that "[t]he Petitioner has continued . . . to maintain a systematic and continuous course of business through new entities which have assumed the responsibilities and liabilities of the initial corporate entity." However, the U.S. Citizenship and Immigration Policy Manual states that in instances where there is a "new or successor employer seeking to classify the beneficiary as an employment-based 1st preference multi-national executive or manager," the new employer must file a new petition establishing eligibility for the benefit sought. *See* https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-3.[3] Because the filer of this motion is [redacted] which is not an affected party, that filer is not entitled to file a motion. Therefore, the motion to reopen and reconsider must be dismissed.

For the foregoing reasons, the Petitioner's motion to reopen and reconsider does not meet the requirements of a motion. Under 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements must be dismissed.

ORDER: The motion to reopen filed on November 9, 2021 is dismissed.

FURTHER ORDER: The motion to reopen filed on November 9, 2021 is dismissed.

[2] A legal brief was submitted in support of the December 2020 motion, stating that the original Petitioner "underwent hardship that led to the entity's closure." The brief further states that two other separate legal entities had been incorporated. Consequently, it would appear the Beneficiary is no longer eligible for the benefit sought as filed.

[3] As indicated in our prior decision, there is nothing precluding a newly created entity from filing a new petition(s) on the Beneficiary's behalf.