U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24061829

Date: JAN. 25, 2023

Motions on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner describes itself as an engineering consulting firm and seeks to permanently employ the Beneficiary as its president. The company requests his classification under the first-preference immigrant visa category as a multinational executive. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, and we dismissed the Petitioner's following appeal. *See In Re: 10792737* (AAO Dec. 30, 2020). While we reserved decision on two of the denial grounds, we agreed with the Director that the company did not demonstrate its proposed U.S. employment of the Beneficiary in the claimed executive capacity. *Id.* We then dismissed the Petitioner's following two rounds of combined motions to reopen and reconsider, finding the first round to be untimely. *See In Re: 20076325* (AAO Apr. 26, 2022).

The matter returns to us on a third round of combined motions. The Petitioner submits additional evidence and asserts that U.S. Citizenship and Immigration Services' (USCIS') disregarded the company's initial, timely-filed combination of motions.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our most recent decision misapplied law or USCIS policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Motion to Reconsider

Petitioners must generally file motions within 33 days of the dates USCIS mailed the unfavorable decisions. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). Because of hardships from the COVID-19 pandemic over the past few years, however, USCIS has extended filing deadlines. At the time we issued our December 30, 2020 appellate decision, the Agency allowed petitioners 63 days in which to file motions on mailed decisions. USCIS Newsroom, "USCIS Extends Flexibility for Response to Agency Requests," Dec. 18, 2020, https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-2.

The record shows that USCIS received the Petitioner's initial combined motions on March 26, 2021, 86 days after we issued our appellate decision. A preponderance of evidence showed that the company did not file the motions during the 63-day period after the appeal's dismissal. We therefore dismissed the filings as untimely. *See* 8 C.F.R. § 103.5(a)(4) (requiring the Agency to dismiss a "motion that does not meet applicable requirements").

The Petitioner, however, asserts that it first submitted combined motions not in March 2021, but on a timely basis in the prior month. The company's executive director, who is also the Beneficiary's son, states: "USCIS failed to send a receipt notice or rejection notice in response to the … [Form] I-290B[, Notice of Appeal or Motion,] that I filed on or about February 15, 2021."

The Petitioner's executive director says the company waited about three weeks for a USCIS response to the submission before calling the Agency's National Customer Service Center. But, because the Petitioner lacked a receipt notice or returned processing fee check, he says a USCIS representative could not find information about the claimed submission. The executive director says: "I was left with no other choice but to refile the [motions,] which I did on March 24, 2021."[1] He states that USCIS neither deposited the submission's processing fee check nor returned the motions as rejected. "USCIS created this problem," he says, "and failed to provide any assistance to resolve the matter."

The record, however, does not support the Petitioner's claimed timely submission of initial combined motions in February 2021. The company submits neither copies of the motions, tracking information regarding their delivery to USCIS, nor financial documentation regarding the deposit/return of the processing fee check that purportedly accompanied them. The Beneficiary's immigration file and USCIS information systems do not indicate submission or rejection of a post-appeal Form I-290B in these proceedings until March 2021. Nor does the company's March 2021 filing mention the purported, prior submission. Also, in the Petitioner's second round of combined motions, the company's executive director stated his submission of the purported initial motions not on or about February 15, 2021, but on or about January 20, 2021. *See Matter of Ho*, 19 I&N Dec.

[1] A delivery label in USCIS records indicates that the U.S. Postal Service shipped the Petitioner's submission for overnight delivery on March 25, 2021.

582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

The Petitioner has not demonstrated its claimed timely submission of combined motions in February 2021. Thus, the motion to reconsider does not demonstrate our erroneous dismissal of the company's March 2021 filing as untimely. We will therefore dismiss the motion.

B. Motion to Reopen

The Petitioner submits copies of online news articles, claiming they show USCIS' mishandling of immigration filings around the time of our appellate decision. The articles note that, effective October 2, 2020, USCIS proposed fee increases - including a $25 increase to the $675 processing fee for a Form I-290B. Consistent with the proposed increases, the Petitioner states that, with its purported initial motions in February 2021, it included a check for an increased processing fee of $700. Three days before the proposed fee increases took effect, however, a federal court issued a nationwide preliminary injunction on the plan and ordered USCIS to stay its October 2, 2020 effective date. *See Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 526 (N.D. Cal. 2020); *see also Nw. Immigrant Rights Project v. USCIS*, 496 F. Supp. 3d 31, 41 (D.D.C. 2020) (about a week after the issuance of *Immigrant Legal Res. Ctr.,* also preliminarily enjoining USCIS from implementing the proposed fee increases).

One of the Petitioner's articles reports that, after the injunctions, USCIS mistakenly rejected submissions that included correct fee amounts. *See* Sheri-Kae McLeod, *Caribbean Nat'l Weekly*, "USCIS Mistakenly Rejects Immigration Applications Due To Filing Fees," Oct. 21, 2020, https://www.caribbeannationalweekly.com/legal-news/uscis-mistakenly-rejects-immigration-applications-due-to-filing-fees/. In its prior filing, the company asserted that USCIS knew of an injunction before publicly announcing the proposed fee increases. The Petitioner's executive director states that USCIS should "explain why they failed to publicly announce their error and apologize for the mess they created rather than placing fault on me as the Petitioner."

Online information, however, shows that USCIS did not know of the court injunctions when it announced the proposed fee increases. The Agency publicly proposed the final fee increases in July 2020, before the issuance of the first injunction on September 29, 2020. USCIS Newsroom, "USCIS Adjusts Fees to Help Meet Operational Needs," Jul. 31, 2020, https://www.uscis.gov/news/news-releases/uscis-adjusts-fees-to-help-meet-operational-needs; *see also* Final Rule on Fee Schedule, 85 Fed. Reg. 46788 (Aug. 3, 2020). October 2, 2020 was not the announcement date of the proposed fee increases, but rather their intended effective date. *Id.* Also, the record does not explain how USCIS, when proposing the fee increases in July 2020, could have known that federal courts would enjoin the plan about two months later. The record therefore does not support the Petitioner's claim that USCIS erred in announcing the proposed fee increases.

The Petitioner also appears to suggest that USCIS improperly declined to accept the company's purported, initial motions in February 2021. But the article about USCIS' mistaken rejection of immigration applications does not support that claim. According to the article, USCIS rejected filings that, consistent with the injunctions, included processing fees complying with the Agency's existing fee schedule. Sheri-Kae McLeod, *Caribbean Nat'l Weekly*, *supra*. In contrast, the

Petitioner states that its initial motions in February 2021 included a fee for the *increased* amount that USCIS proposed. Under the injunctions, which have remained in effect from October 2020 through this decision's date, USCIS could not have legally accepted the Petitioner's purported motions in February 2021 with the increased fee amount. *See Immigrant Legal Res. Ctr.*, 491 F. Supp. 3d at 526; *Nw. Immigrant Rights Project*, 496 F. Supp. 3d at 41; *see also* 8 C.F.R. § 106.1(a) ("Fees must be submitted with any USCIS benefit request . . . in the amount . . . provided in this part.") Moreover, as previously discussed, even if the Petitioner demonstrated USCIS' improper rejection of similar filings, the company has not sufficiently established its claimed submission of the initial motions in February 2021.

The Petitioner's motion to reopen does not demonstrate USCIS' mishandling of the company's claimed initial motions in February 2021. We will therefore dismiss the motion.

III. CONCLUSION

The Petitioner's motions do not establish our erroneous dismissal of the company's March 26, 2021 filings as untimely. The motions therefore do not demonstrate the company's eligibility for the requested benefit.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.