U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27930003

Date: AUG. 3, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an e-commerce and frame store business, seeks to temporarily employ the Beneficiary as its chief financial officer under the L-1A nonimmigrant classification for intracompany transferees. 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 Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner appealed that decision, asserting that the Beneficiary's U.S. employment would be in an executive capacity. We dismissed the appeal, affirming the Director's determination that the record did not establish that the Beneficiary would be employed in an executive capacity. The Petitioner has filed, and we have dismissed, six subsequent motions. The matter is now before us on a motion to reconsider.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

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). Pursuant to 8 C.F.R. § 103.5(a)(1)(ii), our review on motion is limited to reviewing our latest decision, which in this case is our decision dated October 28, 2022 in which we dismissed the Petitioner's previous motion to reconsider. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

The issue before us is whether the Petitioner has established with the current motion that our prior decision was based on an incorrect application of law or USCIS policy. Therefore, although the

Petitioner also requests that we review the underlying basis for denial of its petition and dismissal of its appeal, they are not properly before us on motion because we did not reach them in our prior decision.

A. Procedural History

We dismissed the Petitioner's appeal of the Director's decision on October 10, 2018, and the Petitioner has previously filed five motions to reconsider and one motion to reopen, which we also dismissed.

The Petitioner's third motion, a motion to reopen, was untimely filed, and we dismissed it on that basis, citing the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*).[1] The Petitioner's fourth motion, a motion to reconsider our dismissal of the late third motion, was also dismissed. In that decision, citing the regulation at 8 C.F.R. § 103.5(a)(1), we noted that USCIS may excuse the untimely filing of a motion to reopen if the petitioner demonstrates that the delay was reasonable and beyond its control.

In its fifth motion, the Petitioner stated that it believed the 33-day filing period applicable to motions would be measured in business days rather than calendar days, and therefore the untimely filing of its third motion should be excused. We acknowledged this explanation but dismissed the motion to reconsider, concluding that the Petitioner did not meet its burden to establish that the late filing of its motion to reopen was reasonable or beyond its control.[2] Further, we determined that the Petitioner's motion to reconsider did not establish how we misapplied law or USCIS policy by dismissing the fourth motion, which lacked any explanation for the untimely filing of the motion to reopen.

In our October 28, 2022 decision dismissing the Petitioner's sixth motion, we noted that the Petitioner did not contend that our decision to dismiss its fifth motion was based on an incorrect application of law or USCIS policy, as required under 8 C.F.R. § 103.5(a)(3). We further noted that it repeated assertions made in its first and second motions to reconsider, which we had already addressed in dismissing those motions.

B. Motion to Reconsider

This matter is again before us on a motion to reconsider. In the brief submitted in support of the motion, the Petitioner again concedes, as in prior motions, that the late filing of its third motion was "a mistake on our part" and again requests a "one time relaxation" of the regulatory requirements applicable to motions. Although the Petitioner asks that we reconsider its contention that the Beneficiary would be employed in an executive capacity in the United States, it does not contend that our decision to dismiss its sixth motion was based on an incorrect application of law or USCIS policy, as required under 8 C.F.R. § 103.5(a)(3).

[1] We dismissed the Petitioner's second motion to reconsider on December 11, 2019, and the Petitioner filed its third motion on January 17, 2020. Thus, it did not meet the 33-day filing deadline prescribed in 8 C.F.R. §§ 103.5(a)(1) and 103.8(b).
[2] The pertinent regulations do not state whether the 33-day filing period refers to calendar days or business days, but the term "day" normally means any calendar day and does not exclude weekend days or holidays. We concluded that, absent specific language in the regulations stating that "days" referred only to business days and not to Saturdays, Sundays, and holidays, it was not reasonable for the Petitioner to assume that the filing period was measured in business days rather than calendar days.

As noted above, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in its current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.