U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29426502

Date: DEC. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a Ugandan company engaged in the sale of fireworks, fire prevention products, and medical and industrial gases, seeks to temporarily transfer the Beneficiary to the United States to serve as the chief operating officer of its new office[1] 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 California Service Center denied the petition, concluding that the record did not establish that the Petitioner's subsidiary had secured sufficient physical premises to house the new office and that the new office would support a managerial or executive position within one year. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen 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).

A motion to reopen must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

[1] The proposed U.S. employer is the Petitioner's subsidiary, [redacted], which was incorporated in Texas in [redacted] 2022.

We dismissed the Petitioner's appeal on January 30, 2023. The Petitioner filed this motion to reopen on July 18, 2023, 169 days after our decision was issued. Accordingly, the motion to reopen was untimely filed.

On motion, the Petitioner contends that it never received our decision dismissing the appeal as an explanation for the untimeliness of the motion to reopen. Specifically, the Petitioner states that it has received no notices from USCIS despite mailing a Form AR-11, Alien's Change of Address Card, to USCIS several times. Because it asserts that it only recently learned of the appeal's dismissal from its former counsel, the Petitioner requests that we reopen the case and allow it "a fair opportunity to respond timely."

Under 8 C.F.R. § 108.3(a)(1)(i), routine service consists of mailing the notice by ordinary mail addressed to the affected party and their attorney or representative of record at their last known address. Here, the Petitioner's last known address at the time our decision was issued was the mailing address provided on the Form I-290B, Notice of Appeal or Motion. Moreover, this address, as well the address of the Petitioner's counsel, was also set forth on the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative submitted with the appeal. The record reflects that we mailed a copy of the decision to both the Petitioner and its counsel at their last known addresses set forth on these forms.[2] Further, USCIS records do not indicate that either copy of the decision was returned as undeliverable; therefore, the decision was properly served under 8 C.F.R. § 103.8(a)(1)(i) and 8 C.F.R. § 292.5.

Absent persuasive evidence that the Petitioner sought to notify USCIS of a change of address prior to the issuance of the denial notice, the Petitioner has not met its burden to demonstrate that the delay in filing was reasonable and beyond its control. Accordingly, we have no basis to excuse the late filing of the motion to reopen under 8 C.F.R. § 103.5(a)(1)(i). Even if we were to exercise our discretion to excuse the untimely filing of this motion, the Petitioner has not satisfied the requirements for a motion to reopen because it does not state any new facts supported by documentary evidence that relate to our decision dismissing its appeal. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

[2] Despite the Petitioner's claim to the contrary, neither the record of proceedings nor USCIS records reflect that the Petitioner updated its address.