U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12009031

Date: NOV. 24, 2020

Motion on Administrative Appeals Office Decision

Form I-140C, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a food import and distribution company, seeks to permanently employ the Beneficiary as its President in the United States 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: (1) the Petitioner had a qualifying relationship with the Beneficiary's former foreign employer; (2) the Petitioner was doing business in accordance with the regulations; and (3) the Beneficiary would act in a managerial or executive capacity in the United States. In addition, the Director concluded that the Petitioner and Beneficiary willfully misrepresented material facts related to his claimed foreign employment.

The Petitioner later appealed the decision and we dismissed the appeal. We withdrew the Director's determination that the Petitioner was not doing business, but affirmed the remaining grounds for denial. In addition, we concurred with the Director's determination that the Petitioner and Beneficiary willfully misrepresented material facts and noted additional willful misrepresentations on the part of both. The Petitioner subsequently filed two combined motions to reopen and reconsider, which we dismissed.[1] The matter is again before us on a combined motion to reopen and motion to reconsider.

Upon review, we will dismiss the motions.

I. MOTION REQUIREMENTS

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 establish that our most recent decision misapplied law or U.S. Citizenship and Immigration Services 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 criteria and establish eligibility for the requested benefit.

[1] The Petitioner also filed an appeal of our decision denying its second combined motion, which we rejected for lack of jurisdiction.

II. ANALYSIS

In support of its combined motion, the Petitioner's general manager provided the following statement on the Form I-290B, Notice of Appeal or Motion (verbatim):

> As we have submitted and demonstrated on the previous filings of I-290B, all the supporting evidence/documents have been piled to your desk, either from the parent company [] or from the local government, [redacted] governing administrative body and also from official copies of [the Petitioner]. I just want you, the respectable and reasonable officials, to reopen the files and let us know what other documents you can think of that we should further submit in order for you to reopen and reconsider the case. Ever since [the Beneficiary] came into the executive management of [the Petitioner], we've been strictly complying with all laws and regulations, paying all the relevant taxes and fees to support our great nations. Even during the recent pandemic disaster, we still keep our taxes paid on time and keep our employees not to be burden to our country. [The Beneficiary] has sold his personal property and drew from his own personal account to ensure all employees on payroll so as not to squeeze the unemployment benefit as most other entities do. As a managing assistant to the company and citizen of USA, I am grateful to and proud of the decision [the Beneficiary] made to help our country with the best he can, and moved when he asked me find ways about how he could help to support our local frontrunners to fight the COVID-19. For such a honest and helpful gentleman, I could not understand why our USCIS officials just stick with the minor mistake he made when he was interviewed at the consulate by not mentioning [the parent company]. We are human, and what I learned in US is that human does make mistake, even the president of our country.

No additional evidence or documentation was submitted.

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In our prior decisions we found that the Petitioner had not established that it had a qualifying relationship with the Beneficiary's former foreign employer or that the Beneficiary would act in a managerial or executive capacity in the United States, and we affirmed the Director's determination with regard to willful misrepresentation on the part of both the Petitioner and the Beneficiary. In the current motion the Petitioner generally references previously submitted evidence and documentation, which has already been considered in our previous decisions. No new facts are submitted with the current motion, nor any new documentation related to the Petitioner's qualifying relationship with the foreign entity or the Beneficiary's employment in a managerial or executive capacity. Moreover, while the Petitioner references the Beneficiary's "mistake," it does not state new facts or submit new evidence regarding the willful misrepresentation determination.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings.

B. Motion to Reconsider

A motion to reconsider must establish that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner does not identify any incorrect application of law or policy in our prior decision with regard to the Petitioner's qualifying relationship with the foreign entity or the Beneficiary's employment in a managerial or executive capacity, and does not request reconsideration of the willful misrepresentation determination. Although the Petitioner urges us to consider the previously submitted evidence and documentation, we have already done so in prior decisions. The Petitioner does not identify any incorrect application of law or policy by us in our most recent decision or any of our prior decisions.

Accordingly, the Petitioner has not shown proper cause for reconsideration of our previous decision with regard to the Petitioner's qualifying relationship with the foreign entity or its employment of the Beneficiary in a managerial or executive capacity, or with regard to the finding of willful misrepresentation of material facts.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.