



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 12825338

DATE: NOV. 25, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Multinational Executive or Manager

The Petitioner, which describes itself as a franchised Indian vegetarian restaurant, seeks to permanently employ the Beneficiary as a human resources manager under the preference immigrant classification for multinational executives or managers. See Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This employment-based “EB-1” immigrant classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that the United States employer and the foreign employer have a qualifying relationship as required in section 203(b)(1)(C) of the Act and 8 C.F.R. § 204.5(j)(3)(i)(C). The Petitioner filed a motion to reconsider, which the Director dismissed.

The Petitioner filed an appeal with the AAO. We dismissed the appeal in a decision that was issued on January 24, 2020, determining that the Director was correct in concluding that the Petitioner did not establish a qualifying relationship between itself and the Beneficiary’s prior foreign employer.

On February 27, 2020, the Petitioner filed a motion to reopen and a motion to reconsider, together with a brief and additional documentation. We dismissed the combined motion on May 19, 2020, on the ground that it was untimely filed. The matter is now before us on another motion to reopen and motion to reconsider. Upon review, we will dismiss the motion(s).

1. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Our dismissal of the previous combined motion was based on the fact that it was filed 34 days after the service of our dismissal of the appeal, which did not comply with the regulatory requirement that a motion be filed within 33 calendar days of the service date of our unfavorable decision. See 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b). The Petitioner was specifically advised on the cover page of our decision dismissing the appeal that any motion must be filed within 33 days of the date of the decision.

With its current combined motion the Petitioner submits copies of the brief and documentary materials submitted with its prior motion, as well as a cover letter addressing the untimeliness of that motion. The Petitioner also submits a copy of Executive Order No. 102 issued by Governor Philip D. Murphy of the State of New Jersey on February 3, 2020, addressing the spread of the novel coronavirus and establishing a coronavirus task force in the state, as well as a copy of an announcement by U.S. Citizenship and Immigration Services (USCIS), dated May 1, 2020, extending flexibility for responding to agency requests due to the COVID-19 pandemic.

As its first line of argument the Petitioner asserts that the combined motion filed on February 27, 2020, was timely filed because the date of filing was the 33rd day after January 24, 2020, the date of the appellate decision. This claim is not correct. The 33rd day after January 24, 2020, was February 26, 2020. Accordingly, the filing deadline for the motion was February 26, 2020. The Petitioner's motion did not meet this filing deadline.

As its second line of argument the Petitioner asserts that even if its motion was untimely filed, USCIS has the discretion to accept a motion filed after the 33-day deadline if the delay was reasonable and beyond the control of the Petitioner. An exercise of such discretion is warranted in this case, the Petitioner asserts, because the filing was only one day late and "was due to the fast developing COVID-19 pandemic at that time which caused a delay in obtaining the required documents from their overseas branches." The Petitioner cites the executive order creating a coronavirus task force in New Jersey, dated February 3, 2020, as evidence that being "a big hospitality enterprise based in New York and New Jersey with overseas locations in the Middle East, Europe and Asia, they were unable to obtain the proper documents on time." The Petitioner also cites the USCIS announcement on May 1, 2020, by which "USCIS extended the flexibility to respond to RFEs and submit MTRs by 60 days."

While the regulation at 8 C.F.R. § 103.5(a)(1)(i) does give us the discretion to excuse the late filing of a motion to reopen "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner," no such demonstration has been made by the Petitioner in this case. The Petitioner has not identified any documents submitted with its late-filed motion on February 27, 2020, that were obtained from overseas, nor submitted any evidence of specific documents whose delivery was delayed by COVID-19. As for the announcement by USCIS on May 1, 2020, extending flexibility for responding to agency requests in view of COVID-19 by allowing USCIS to receive motions and other filings up to 60 days after their normal due dates, this flexibility only applies to decisions, requests, or notices issued between March 1 and July 1, 2020, as the announcement clearly states. Since our decision dismissing the Petitioner's appeal was dated January 24, 2020, it is not covered by the flexibility provisions that USCIS announced on May 1, 2020. Accordingly, the normal 33-day filing period prescribed in the regulations applies to the Petitioner's combined motion

contesting our appellate decision. The filing deadline for that motion was February 26, 2020. Therefore, the Petitioner's combined motion filed on February 27, 2020, was not timely filed.

In summation, the new facts and documentary evidence submitted in support of the current motion do not establish that the initial motion was timely filed or covered by the 60-day flexibility extension announced by USCIS. Nor has the Petitioner shown that the delay in filing the initial combined motion was reasonable or beyond its control. Therefore, the Petitioner has not presented proper grounds for reopening this proceeding under 8 C.F.R. § 103.5(a)(2). Likewise, the Petitioner has not shown that our decision dismissing the previous combined motion as late filed was based on any incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3) to reconsider our decision.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.