U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8935902

Date: OCT. 1, 2020

Motion on Administrative Appeals Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an operator of a liquor store, seeks to permanently employ the Beneficiary as its "executive" 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). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding the record did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. We dismissed a subsequent appeal. The Petitioner later filed a motion to reopen and a motion to reconsider that we also dismissed. Further, the Petitioner later filed an appeal that we rejected, indicating that we did not have jurisdiction over an appeal of our own decision. The matter is now before us again on a motion to reopen and motion to reconsider.

On motion, the Petitioner contends that we erred in rejecting its previous appeal and in deciding that we did not have jurisdiction over it. The Petitioner asserts that it "properly filed" the I-290B, Notice of Appeal or Motion "timely and correctly…per the online instructions."

Upon review, we will dismiss the motion to reopen and motion to reconsider.

I. MOTION REQUIREMENTS

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

II. ANALYSIS

A. Motion to Reopen

In order to meet the requirements of a motion to reopen the Petitioner must submit new facts supported by affidavits or documentary evidence. 8 C.F.R. § 103.5(a)(2). However, in support of this motion, the Petitioner provides no new affidavits or documentary evidence in support of its assertions. Therefore, the Petitioner has not met the requirements of a motion to reopen.

B. Motion to Reconsider

With respect to the motion to reconsider, the issue before us is whether our previous decision to reject the Petitioner's appeal was a correct application of law based on the evidence on the record at the time of that decision.

In March 2019, we issued a decision dismissing the Petitioner's motion to reopen and motion to reconsider. The cover page March 2019 decision clearly discussed the Petitioner's right to file motions and referred to the applicable regulations. In response, the Petitioner filed a Form I-290B, Notice of Appeal or Motion on April 25, 2019 and in Part 2 it selected 1.b. stating that it was "filing an appeal to the AAO" and that it would "submit [its] brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." Subsequent to this, the Petitioner submitted a brief on May 23, 2019. Since the Petitioner indicated on the aforementioned Form I-290B that it was filing the appeal, we rejected the appeal in October 2019, noting that the regulations gave us no jurisdiction over appeals of our own decisions.

Now, on appeal, the Petitioner only vaguely indicates that we "erred" in this decision and that the April 2019 Form I-290B was filed "timely and correctly" and "per the online instructions." First, the Petitioner has not clearly articulated how our previous rejection was an incorrect application of law or policy based on the evidence on the record at the time of that decision, and for this reason alone, it has not met the requirements of a motion to reconsider. However, upon review, we do not agree that we erred in rejecting the Petitioner's previous appeal. The Petitioner clearly designated its intention to file an appeal on the April 2019 Form I-290B, and consistent with an appeal, it subsequently submitted a brief after the date of filing. This can be differentiated from motions, where all supporting briefs or additional evidence must be submitted at the time of filing the Form I-290B. Therefore, it appears clear that the Petitioner's intention was to file an appeal to one of our decisions, and as noted, we have no jurisdiction over such an appeal. As such, our previous decision to reject the Petitioner's appeal was consistent with law.

In addition, in the brief submitted in support of its April 2019 appeal the Petitioner stated that the "original Petition should have been approved from the outset and the continued denials have prejudiced the petitioner." The Petitioner further added that "the foreign company is no longer operating their business." For first preference multinational executives or managers, a petitioner must have a qualifying relationship with the beneficiary's foreign employer at the time the petition is filed and must maintain that relationship until the petition is adjudicated. This interpretation is consistent with the purpose in creating this classification as a means of permanently transferring key managers and executives within a multinational organization. A beneficiary cannot be transferred to the United

States as a multinational executive or manager from a company that is no longer in the same multinational organization, whether that is because the former employer no longer exists in any form, or because it no longer shares the requisite common ownership and control with the petitioning U.S. employer. See *Matter of F-M- Co.*, Adopted Decision 2020-01 (AAO May 5, 2020). The Petitioner's statement on motion that the Beneficiary's foreign employer "is no longer operating their business" indicates that it no longer maintains a qualifying relationship with his former foreign employer. As such, it appears that the Petitioner has acknowledged that it is no longer a qualifying organization, and in turn, that the Beneficiary is no longer eligible for the benefit sought.

For the foregoing reasons, the Petitioner has not established that our previous decision to reject its appeal was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of that decision nor has it demonstrated the Beneficiary's eligibility for the benefit sought as necessary to grant the motion to reconsider.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen or to reconsider our previous decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.