U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24993051

Date: JAN. 24, 2023

Motion on Administrative Appeal Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner states that it is a distributor of mechanical tools and supplies. It seeks to employ the Beneficiary as its general manager 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 on multiple grounds, concluding that the Petitioner did not establish the following: 1) the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three years preceding the date the petition was filed; 2) the Beneficiary's U.S. position would be in a managerial or executive capacity; 3) the Petitioner had continuing ability to pay the Beneficiary's proffered wage; and 4) the Petitioner would be a bona fide employer of the Beneficiary. The Petitioner appealed the unfavorable decision, and we dismissed the appeal, concluding that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity. We determined that this identified basis for denial was dispositive of the Petitioner's appeal and reserved its appellate arguments regarding the three remaining grounds. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). The matter is now before us on a combined motion to reopen and reconsider.

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 to reopen and motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must meet the formal filing requirements, such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee, and show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The issue at hand is whether the Petitioner has offered new relevant facts supported by credible evidence or made arguments establishing that our decision to dismiss the appeal was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy given the evidence in the record at the time of our prior decision.

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. As such, we will examine any new facts and supporting evidence that pertain to the dismissal of the appeal; we will also consider arguments establishing that our decision dismissing the appeal was based on a misapplication of law or USCIS policy.

A. Motion to Reopen

First, we turn to the Petitioner's motion to reopen in support of which the Petitioner asks that we "please find proof" that its employee (whom we assume to mean the Beneficiary) received monthly earnings of $2300 rather than annual earnings of $70,000. The Petitioner also referred to an employee payroll, job descriptions for "the compnay [sic] office manager," and five years of company tax returns. Because the Petitioner refers to these documents as "the attached," it thereby indicates that the motion is supported by submitted evidence. Despite the Petitioner's ambiguous reference however, the record shows no evidence attached to the instant motion. As such, the Petitioner's reference to a payroll document, an employee's job description, and company tax returns likely pertains to previously submitted, rather than new, evidence. Accordingly, since the Petitioner has offered no new facts supported by affidavits or other evidence, it has not met the requirements of a motion to reopen, and the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

Next, we turn to the Petitioner's motion to reconsider. In our prior decision, we focused on a single issue – the Beneficiary's proposed employment in the United States – as the basis for dismissing the appeal. In dismissing the appeal, we provided a comprehensive analysis in which we identified and discussed deficiencies concerning the Beneficiary's job duties and the Petitioner's staffing, and we explained how these factors resulted in our determination that the Petitioner did not meet the eligibility criteria. In order to determine that reconsideration of our decision is warranted, the Petitioner must

make a cogent argument explaining how we misapplied the law or USCIS policy in our prior decision dismissing the appeal.

Here, the Petitioner does not make such an argument. Instead, the Petitioner makes ambiguous references to "the attached" documents, even though no supplemental evidence has been received. And the Petitioner goes on to make further ambiguous references to "proof of employee income," a modified job offer letter, and a statement concerning "the employee coming to state to work under same employer . . . as a company manager." Not only is there no evidence that any of the referenced documents were actually provided in support of this motion, but no argument has been made that such evidence demonstrates any legal or factual error in our prior decision.

In sum, we provided a comprehensive analysis of the Petitioners submissions and explained precisely how we reached an adverse conclusion dismissing the appeal. On motion, the Petitioner does not explain how our decision was incorrect, nor does it establish that we misapplied the law or USCIS policy in reaching that decision. As a result, the filing does not meet the requirements of a motion to reconsider and must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.