U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33328178

Date: AUG. 13, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, a cell phone retailer, seeks to employ the Beneficiary as a controller. The company requests his classification under the employment-based, first-preference (EB-1) immigrant visa category as a multinational executive. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). Multinational businesses may transfer qualified noncitizens in this category to permanently work in the United States in managerial or executive capacities. *Id.*

The Director of the Texas Service Center denied the petition, and we dismissed the Petitioner's following appeal and motion to reconsider. *See In Re: 30316085* (AAO Mar. 15, 2024). We affirmed the Director's findings of insufficient evidence that:

- The Beneficiary would work in an executive capacity in the United States;
- He worked abroad for at least one year during the three-year period preceding the petition's filing; and
- The Petitioner and his foreign employer are affiliated companies.

The matter returns to us on the Petitioner's combined motions to reopen and reconsider.[1] The company submits a revised copy of its 2021 federal income tax return and contends that the prior copy mistakenly omitted the Beneficiary's foreign employer as the Petitioner's primary shareholder.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the company's motions do not address the dismissal grounds regarding the Beneficiary's foreign and proposed U.S. employment nor establish a qualifying relationship between the company and his foreign employer. We will therefore dismiss the motions.

[1] On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicates its filing of an appeal. Petitioners cannot appeal our decisions. *See generally AAO Practice Manual*, Ch. 3.2(e), www.uscis.giv/aao-practice-manual. The company's written brief, however, identifies the filing as combined motions to reopen and reconsider. We will therefore treat the filing as combined motions.

I. LAW

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 prior decision misapplied law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, we review only our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Nature of the Beneficiary's Foreign and Proposed U.S. Work

The Petitioner's motions address only its claimed qualifying relationship to the Beneficiary's foreign employer. As previously indicated, however, we did not dismiss the company's prior motion based only on the claimed qualifying relationship. Rather, we also dismissed the motion based on insufficient evidence that he would work in the United States in the claimed executive capacity and that he had worked abroad for at least one year during the three-year period preceding the petition's filing. *See* section 203(b)(1)(C) of the Act (stating requirements for multinational executives and managers).

A party that inadequately briefs issues "waives" them. *United States v. Scroggins*, 599 F.3d 433, 446 (5th Cir. 2010); *see also Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The Petitioner does not brief or even mention the dismissal grounds regarding the Beneficiary's foreign and proposed U.S. employment. Thus, the company has not demonstrated the petition's approvability. We will therefore dismiss the motions.

B. Qualifying Relationship

The Petitioner's motions also do not demonstrate the claimed qualifying relationship between it and the Beneficiary's foreign employer. *See* section 203(b)(1)(C) of the Act (requiring a petitioner or its affiliate or subsidiary to have employed a beneficiary abroad). The revised copy of the company's 2021 federal income tax return is internally inconsistent and unreliable. Part I of Schedule G of the Internal Revenue Service (IRS) Form 1120 U.S. Corporation Income Tax Return indicates that the Beneficiary's foreign employer owns 51% of the Petitioner. But the schedule's Part II and IRS Form 1125-E Compensation of Officers state that he and two other people own all the company's stock shares. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

Also, prior versions of the Petitioner's 2021 tax return conflict. In response to the Director's request for additional evidence, the company submitted a copy of the return with different amounts of net income, net current assets, and officer compensation than listed on the copy provided with the initial filing. The two return versions also bear dates for different days in June 2022. The Petitioner has not demonstrated which version it purportedly filed with the IRS. The company's 2021 tax returns are therefore unreliable. *See Matter of Ho*, 19 I&N Dec. at 591 ("Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.")

Further, the Petitioner previously argued that the same two people owned both it and the Beneficiary's foreign employer. The company does not explain why it now contends that the foreign entity itself owns it. *See Matter of Ho*, 19 I&N at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence). Also, as our prior decision found, the company has not provided legible transactional documentation of the foreign employer's ownership or copies of stock certificates, a stock ledger, or other comparable evidence of the Petitioner's ownership. For the foregoing reasons, the Petitioner's motions do not demonstrate a qualifying relationship between it and the Beneficiary's foreign employer.

III. CONCLUSION

The Petitioner's motions do not demonstrate eligibility for the requested benefit. We will therefore affirm the petition's denial and the appeal's dismissal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.