U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35249474

Date: DEC. 19, 2024

Motion 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 permanently employ the Beneficiary as its chief operating officer (COO) under the first 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 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 Nebraska Service Center approved the petitioner but then revoked that approval on notice, concluding that the Petitioner had not established that the Beneficiary had worked abroad, and would work in the United States, in a qualifying managerial or executive capacity. The Director also concluded that the Petitioner did not establish its ability to pay the Beneficiary's proffered salary from the time of filing onward. We dismissed a subsequent appeal based on the qualifying capacity issues, reserving the issue of ability to pay and noting additional discrepancies in the record. The matter is now before us on a motion to 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.

A motion to reconsider must establish that our prior 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 motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. The Petitioner also disputes various grounds that the Director cited in the revocation notice. Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). The revocation is not the latest decision in this proceeding; the only decision properly before us on motion is our July 2024 dismissal of the Petitioner's appeal. The Petitioner must therefore identify incorrect applications of law or policy in our July 2024 decision that would warrant reconsideration, and establish that our July 2024 decision was incorrect based on the record at the time of that decision.

This proceeding has a lengthy history. The Petitioner filed the Form I-140 petition in October 2016. The Director denied the petition in February 2018, stating that the Petitioner had not established that the company has sufficient organizational complexity to warrant a qualifying managerial or executive position for the Beneficiary.

The Director granted the Petitioner's motion to reopen the proceeding, and denied the petition for a second time in April 2018. The Director stated that the Beneficiary's supervision of low-level staff does not qualify as an executive capacity.

The Petitioner appealed that decision, and we remanded the petition for a new decision in April 2019. In our remand order, we concluded that the Director "did not adequately explain the deficiencies in the evidence" and that the Director had erroneously applied the requirements for a managerial capacity to a position that the Petitioner had identified as executive.

We also noted several issues of concern. We stated that the Petitioner had not provided enough information and evidence to meet its burden of proof. We also determined that the Petitioner had submitted "conflicting evidence regarding the Petitioner's ownership and control."

Although we had identified deficiencies in the record, the Director approved the petition in April 2019. Later, a July 2019 site visit by an immigration officer (IO) revealed further information of concern. Based in part on this information, the Director issued a notice of intent to revoke (NOIR) the approval in April 2023. The Petitioner did not submit a timely notice to the NOIR, but later submitted a response in October 2023 after requesting a copy of the NOIR. The Petitioner claimed not to have received the NOIR when it was first issued.

The Director revoked the approval of the petition in December 2023. In the revocation notice, the Director acknowledged the Petitioner's October 2023 submission but declined to consider it because it was not timely.

The Petitioner appealed the revocation, and we dismissed the appeal in July 2024. The Petitioner filed a motion to reconsider, which is now before us.

In our July 2024 dismissal notice, incorporated here by reference, we concluded that, even if the Petitioner's response to the April 2023 NOIR had been timely, the evidence and information that the Petitioner submitted in that response did not resolve discrepancies underlying the revocation. We concluded that the Petitioner had not adequately resolved discrepancies regarding the Beneficiary's prior employment abroad; her employment in the United States; the title and duties of the Beneficiary's spouse; and the ownership of the petitioning company. Because these conclusions were sufficient to determine the outcome of the appeal, we reserved the additional issue of the Petitioner's continuing ability to pay the Beneficiary's proffered salary. We also noted that the Petitioner had submitted inconsistent information regarding the ownership of its claimed foreign affiliate.

On motion, the Petitioner asserts that our decision was in error because we failed to recognize that the Petitioner had met all applicable eligibility requirements. We disagree, as explained below.

A. Timeliness of NOIR Response

The Petitioner contends that the Director erred by revoking the approval of the petition in December 2023, because the Director "should have excused the Petitioner's untimely response to the [NOIR]." As we stated in our July 2024 appellate decision, we took the Petitioner's October 2023 submission into account in that decision and concluded that it did not overcome the grounds for revocation.

Because we have already considered the materials in the Petitioner's untimely NOIR response, further discussion of the timeliness issue would serve no practical purpose here.

B. Discrepancies in Claimed Employment Abroad

The Petitioner acknowledged that the Director, in the revocation notice, identified several discrepancies regarding the Beneficiary's claimed employment abroad. We cited these discrepancies in our July 2024 dismissal decision. But the Petitioner maintains, on motion, that is has "resolved the inconsistencies."

The dates of the Beneficiary's claimed employment abroad are material because qualifying employment must have occurred within a three-year window of time prior to the filing of the petition. In our July 2024 decision, we observed that the Petitioner had, at various times, provided three different dates for the ending of the Beneficiary's claimed employment abroad: September 2014, May 2015, and June 2015. Only one of these dates is plausible, because the Beneficiary has been in the United States since September 14, 2014. We concluded that the inconsistent claims undermined the Petitioner's credibility.

On motion, the Petitioner does not explain why it claimed different dates for the ending of the Beneficiary's claimed employment abroad. The Petitioner states that it has submitted "bona fide documents" from August 2010, March 2012, and May 2012, purporting to show that the Beneficiary worked for the Petitioner's claimed foreign affiliate for "at least two years before coming to the U.S."

The Beneficiary's employment with the Petitioner in the United States began no earlier than June 16, 2015, with the approval of a petition granting the Beneficiary L-1A nonimmigrant status. Therefore, the Petitioner must establish that a qualifying employer employed the Beneficiary outside the United States for at least one year during the three years immediately preceding June 16, 2015. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).[1] Accordingly, the Petitioner must establish at least one year of qualifying experience abroad between June 16, 2012 and her latest entry into the United States on September 13, 2014, after which she could not have accumulated additional experience abroad. Documents dated before June 2012, such as the previously submitted documents cited on motion, fall outside the relevant period for qualifying employment abroad.

In our July 2024 decision, we acknowledged that the Petitioner had submitted copies of the Beneficiary's purported pay receipts dated September 2013 through August 2014. But we also noted that these receipts show amounts that do not match the salary stated in a promotion letter purportedly

[1] Government records indicate that the Beneficiary was in the United States from December 5, 2013 to January 21, 2014, and from April 9, 2014 to May 25, 2014. Altogether, the Beneficiary was in the United States without working for the Petitioner for approximately 13 months between June 2012 and June 2015.

from August 2010.[2] We concluded that this difference was one of several discrepancies that raise doubts about the Beneficiary's claimed employment abroad.

On motion, the Petitioner asserts without corroboration that "the Beneficiary's salary increased" "between August 2010 and September 2013." Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). In our July 2024 decision, we acknowledged the Petitioner's claim that "most records are not kept for significant periods of time" by the foreign entity, but the claimed unavailability of records does not diminish the Petitioner's burden of proof to establish eligibility.

The Petitioner repeats earlier assertions that the July 2019 site visit was "unreasonable and arbitrary," and that the interviewing IO had refused the Beneficiary's offer to provide more details about her employment abroad. We considered these assertions in our July 2024 decision, and repeating them on motion does not establish error in our prior decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior [appellate] decision"). We concluded then, and maintain now, that the Petitioner's uncorroborated assertions about the site visit interview do not suffice to explain the deficiencies in the information the Beneficiary provided during the interview, or the numerous discrepancies in the Petitioner's claims about the Beneficiary's prior employment abroad.

In the revocation notice, the Director observed that, in a March 2011 nonimmigrant visa (NIV) application, the Beneficiary claimed employment abroad with a different company, with the initials B-I-. The Director concluded that this discrepancy cast further doubt on the Petitioner's assertions about the Beneficiary's claimed qualifying employment abroad.

On appeal, the Petitioner asserted that the Beneficiary worked for B-I- as a "hobby, not her career." The Petitioner contended that the Beneficiary "did contribute to [B-I-], but she was" "not an employee of the company, nor was she paid as such." The Petitioner did not explain why, when asked to name her current employer on the NIV application, the Beneficiary listed her claimed "hobby" rather than the managerial position at a company that had purportedly employed her for nearly a decade.

In our July 2024 decision dismissing that appeal, we concluded that the Petitioner provided "no reasonable explanation as to why the Beneficiary claimed as her employer a company which, according to the Petitioner, did not employ or pay her," instead of listing "a company that had purportedly employed the Beneficiary for approximately nine years as of the date she filed her NIV application."

On motion, the Petitioner maintains that it "provided a reasonable explanation as to why the Beneficiary claimed [B-I-] as her employer abroad." The Petitioner repeats the assertion that the Beneficiary "was not considered a paid employee." The Petitioner asserts that, nevertheless, the Beneficiary "considered [B-I- to be] her primary employer," but does not corroborate this assertion or

[2] We note, now, that the Petitioner submitted two different pay receipts, both dated August 2014, showing different amounts. One of the August 2014 pay receipts shows "Basic Salary" of ₹21,753 in "Basic Salary" and ₹44,028 in "Net Pay." The other receipt with the same date shows ₹39,145 in "Basic Salary" and ₹66,763 in "Net Pay."

explain why she considered her unpaid hobby to take precedence over a claimed paid role as the COO of the Petitioner's claimed foreign affiliate.

The Petitioner's repetition of its prior unsupported claims does not establish error in our July 2024 appellate decision.

We note that an NIV application includes a specific question about the visa applicant's monthly salary. The Petitioner has not established that the salary information on the Beneficiary's 2011 NIV application is consistent with the Petitioner's claim that the Beneficiary worked for B-I- without pay.

The Petitioner has not established that we erred in our July 2024 decision regarding the Beneficiary's claimed employment abroad.

C. U.S. Position

The Director concluded that the Petitioner had not established that the Beneficiary's position in the United States qualifies as an executive capacity as defined by the regulation at 8 C.F.R. § 204.5(j)(2). The Director cited information from the July 2019 site visit, after which the IO reported that the Beneficiary was unable to describe her day-to-day duties, and that the Beneficiary's spouse "was performing many of the beneficiary's described duties."

The Petitioner argued on appeal that "after the site visit, [the Beneficiary] immediately emailed a detailed description of her daily job duties . . . to the Immigration Officer." When we dismissed the appeal, we stated that the submission of the written job description "is not sufficient to address issues that materialized during the 2019 site visit."

On motion, the Petitioner maintained that it had previously "submitted numerous documents to rectify the inconsistencies," including two job descriptions. It remains that the IO was not present during the preparation of the written job description and therefore the exact circumstances of that preparation are unknown. When given the opportunity to describe her duties in her own words, directly to the IO, the Beneficiary did not do so. The Petitioner has asserted that the circumstances surrounding the site visit prevented the Beneficiary from providing more information, and even that the IO declined the Beneficiary's offer to go into more detail, but these statements are uncorroborated and have no weight.

Our July 2024 decision also included a paragraph discussing the various written descriptions the Petitioner has provided for the Beneficiary's position, but these issues were not grounds for the underlying revocation. As we observed in our appellate decision, "the root of the Director's concern . . . was the Beneficiary's inability to adequately describe her proposed duties at the time of the 2019 site visit."

In the revocation notice, the Director noted that, while the Petitioner had previously reported that the Beneficiary's spouse held the title of "Retail Head," subordinate to the Beneficiary, that individual had signed various documents as the company's "President." In our July 2024 decision, we agreed with the Director that the Petitioner had not overcome the credibility issues that arose during the 2019 site visit.

The Petitioner had contended on appeal that the Beneficiary's spouse sometimes calls himself "president" because "[a]s majority owner of the U.S. company, [the spouse] is authorized to sign documents on behalf of the company. The [documents] list him as President because he is majority owner of the company."

In our dismissal notice, we acknowledged this claim, but noted that some of the Petitioner's documents identify the spouse's father, not the spouse, as the majority shareholder. We also cited a January 2015 document in the record, indicating that the Beneficiary herself had been elected president of the petitioning company. Quarterly tax returns identify the Beneficiary, not her spouse or her father-in-law, as the company's president. We concluded: "These additional inconsistencies further complicate a determination as to the true nature of the Beneficiary's position and job duties."

On motion, the Petitioner asserts that the Beneficiary's spouse's father owned the majority of shares when the Petitioner filed the petition in 2016, but later sold his shares to his son. The Petitioner does not say when this sale took place or cite to any documentation in the record to corroborate the claim.[3]

Because the Petitioner's response rests on claims about share ownership, we repeat here our earlier concerns about the Petitioner's inconsistent claims regarding its ownership.

In our appellate decision, we noted that the Petitioner had not submitted "a stock ledger documenting all share transactions" or otherwise accounted for changes in share ownership. We further noted that the Petitioner had submitted copies of share certificates numbered 1, 2, 3, and 7, but not 4, 5, and 6. We also noted that the Petitioner's income tax returns contain inconsistent claims regarding the company's ownership. In several instances, the same tax return shows different ownership figures on different pages:

	Schedule G	Form 1125-E
The Beneficiary's spouse	10%	49%
The Beneficiary	39%	49%
The Beneficiary's spouse's father	51%	—

As we observed in our July 2024 decision, it is the Petitioner's responsibility to resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The Petitioner asserts on motion that it did not submit "a stock ledger because it had already submitted copies of the actual share certificates." The Petitioner does not account for the absence of at least three share certificates, and does not explain why its tax returns include conflicting information about share ownership. The Petitioner's uncorroborated assertion that the Beneficiary's father-in-law sold

[3] The Petitioner maintains that the claimed "change [of ownership] did not affect the relationship between the companies [that employed the Beneficiary] as they were still related as affiliates." Affiliation, however, is determined by ownership and control. *See* 8 C.F.R. § 204.5(j)(2). The Petitioner does not explain how the claimed change of ownership would nevertheless have preserved the affiliate relationship between the Petitioner and the foreign entity identified as the Beneficiary's former employer.

his shares to the Beneficiary's spouse at some unspecified time after the filing date does not account for the discrepancies described in our July 2024 decision and summarized above.

The Petitioner, on motion, has not overcome the above discrepancies; has not shown that we erred in making these observations in our July 2024 decision; and has not resolved the questions of credibility that result from these discrepancies.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.