U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33407737

Date: SEP. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a metal and plastics machine parts designer and manufacturer, seeks to permanently employ the Beneficiary as its design and production manager 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that it will employ the Beneficiary in the United States in a managerial, or that the Beneficiary was employed abroad in a managerial capacity.[1] The Director dismissed a subsequently filed motion to reopen and reconsider. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

[1] The Petitioner does not assert that the Beneficiary has been or will be employed in an executive capacity.

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 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).

II. PROCEDURAL HISTORY

The Petitioner is a metal and plastics machine parts designer and manufacturer and seeks to permanently employ the Beneficiary as its design and production manager. In denying the petition, the Director determined that the Petitioner did not establish that it will employ the Beneficiary in the United States in a managerial capacity or that the Beneficiary was employed abroad in a managerial capacity. Specifically, the Director determined that the Petitioner had not shown that the Beneficiary supervised or controlled the work of other supervisory, professional, or managerial employees or managed an essential function in either the United States or abroad. Additionally, the Director determined that the Beneficiary's position in both organizations was more akin to a first-line supervisor based on his supervision of non-managerial employees.

The Petitioner filed a combined motion to reopen and motion to reconsider. The Director dismissed the motions, determining that the Petitioner's submissions did not meet the motion requirements. The matter is now before us on appeal.

Where, as here, an appeal is filed in response to a director's unfavorable action on a motion, the scope of the appeal is limited to the director's decision on that motion. The regulatory provision at 8 C.F.R. § 103.3(a)(2)(i) states: "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions *within 30 days after service of the decision*." (Emphasis added). Thus, if the Petitioner wished to appeal the Director's decision to deny the appeal, it should have elected to file that appeal within 30 days of the Director's denial decision. Here, though, the Petitioner elected to file a combined motion instead, thus limiting the scope of the appeal to the merits of the Director's decision to dismiss the motions.

III. ANALYSIS

The only issue correctly before us on appeal is whether the immediate prior decision – that is, the Director's decision to dismiss the motion to reopen and motion to reconsider – was correctly decided. Our review and analysis in this matter, therefore, will focus on that determination.

On motion, the Petitioner asserted that the Director's determination was erroneous because the Beneficiary supervised and controlled the work of professional employees both in the United States and abroad. In support of the motion, the Petitioner submitted the following evidence:

1. Updated letter from its president;
2. A copy of its organizational chart with position descriptions for the Beneficiary's subordinates (previously submitted);
3. Educational credentials for the Beneficiary's U.S. subordinates;
4. U.S. employee performance reviews;
5. Updated letter from the foreign employer's human resources manager; and

6. Educational credentials for the Beneficiary's foreign subordinate employees.

The Director dismissed the Petitioner's motion to reopen, determining that the Petitioner did not submit new facts that were supported by affidavits and/or documentary evidence demonstrating eligibility at the time of filing of the underlying petition. After review of the statements submitted on motion and the accompanying documentation, we concur with the Director's determination.

First, we note that some of the evidence submitted on motion was previously submitted in support of the petition or in response to the Director's request for evidence, and the updated letters from the Petitioner and the foreign employer reiterate many of the assertions contained in their previously submitted letters.

Regarding the Petitioner's assertion that the Beneficiary qualifies as a manager based on his supervision and control of professional employees, we note that we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor in determining whether a beneficiary manages professional employees. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

In dismissing the motion to reopen, the Director acknowledged the Petitioner's submission of educational credentials for the Beneficiary's U.S. and foreign subordinates but determined that the record did not establish eligibility, noting in particular that the Petitioner failed to demonstrate that a bachelor's degree is actually necessary to perform the duties of the Beneficiary's subordinates. Upon review, we agree with the Director's determination.

Although the Petitioner submitted evidence that some of the Beneficiary's U.S. subordinates hold bachelor's degrees, the Petitioner's stated educational requirements for the subordinate positions do not require a bachelor's degree as a minimum for entry into the positions. For example, the manufacturing control manager and the inspection and quality control manager positions require either a diploma and/or five years of experience, an associates degree, or a bachelor's degree, and the position of shipping and receiving supervisor only requires a diploma and five years of experience. The remaining indirect subordinate positions require either two years of experience or a combination of a high school degree and experience. Moreover, the Petitioner did not provide any evidence to establish that a bachelor's degree is required to perform the duties of any of the subordinate positions. Thus, the Petitioner has not established that the Beneficiary, as a personnel manager, will primarily supervise and control the work of other professional employees in the United States.

The Petitioner has also not shown that the Beneficiary's subordinates can be classified as managers or supervisors. We therefore find no error with the Director's determination that the record is insufficient to establish that the Beneficiary's U.S. subordinates were supervisors, managers, or professionals, or that he acted primarily as a personnel manager.

Regarding the Beneficiary's foreign subordinates, the Petitioner submitted the foreign entity's organizational chart from 2009, along with position descriptions and educational requirements, which were not accompanied by corroborating documentation that the foreign entity employed the named subordinates. In addition to noting this evidentiary deficiency, the Director observed that the Petitioner failed to resolve the inconsistency raised in the foreign employer's letter indicating that the Beneficiary oversaw non-supervisory employees. Absent additional, contemporaneous documentation to support the Petitioner's assertions, we agree with the Director's conclusion that the Petitioner did not show that the Beneficiary was employed abroad in a managerial capacity.

Moreover, the Petitioner's assertion that the Beneficiary qualified as a manager by virtue of his supervision and control of professional employees was only offered for the first time in support of its motions. As noted by the Director, we generally do not consider claims for the first time on appeal or motion. *See Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007). The Director correctly noted that a petitioner may not make material changes to a filing to make an apparently deficient petition confirm with requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

For the reasons set forth above, we find that the Director's decision dismissing the Petitioner's motion to reopen was correctly decided.

The Director dismissed the motion to reconsider on the basis that it did not provide reasons for reconsideration that were supported by citations to appropriate statutes, regulations, or precedent decisions, and it did not show that the decision denying the petition was incorrect based on the evidence of record at the time of the decision. Upon review of the Petitioner's submissions on motion, we agree that the motion did not satisfy the requirements of a motion to reconsider. The Petitioner did not specifically and sufficiently articulate why the Director's decision denying the petition was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, nor did the Petitioner cite to any relevant statute, regulation or relevant precedent decision that would support a contention that the Director's decision to deny the petition was based upon a misapplication of statute, regulation, or policy to the evidence of record before the Director at the time of the decision to deny the petition.

On appeal, the Petitioner makes general assertions that the Director erred by not properly analyzing the evidence submitted but does not sufficiently articulate what evidence was not properly analyzed or specifically indicate how the Director incorrectly applied law or policy in the prior decision. We therefore find that the Director's decision dismissing the Petitioner's motion to reconsider was correctly decided.

IV. L-1A NONIMMIGRANT STATUS

We acknowledge that the Beneficiary has received L-1A status, a classification reserved for nonimmigrant managers or executives. Although USCIS has approved at least one L-1A nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition, which is adjudicated based on a different standard, statute, regulation, and case law. Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas*, 20-cv-08869-JCS, 2021 WL 3111627 (N.D. Cal. Jul. 22, 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA*

US v. U.S. Dep't of Justice, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41, 42 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the offices adjudicating nonimmigrant visa petitions, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. Mar. 15, 2000).[2]

V. CONCLUSION

The Director properly determined that the Petitioner's combined motions do not meet the requirements under 8 C.F.R. § 103.5(a)(2) and (3).

ORDER: The appeal is dismissed.

[2] *See also generally* 6 *USCIS Policy Manual* F.4(D), www.uscis.gov/policy-manual.