U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-, INC.

DATE: OCT. 1, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a Texas corporation engaging in cell phone retail sales, seeks to permanently employ the Beneficiary as its President under the multinational executive or manager immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. We dismissed the Petitioner's appeal in a decision dated January 8, 2015. The matter is before us on a motion to reconsider. The motion will be denied.

In denying the petition, the Director determined that the Petitioner did not establish: (1) that the Beneficiary would be employed in the United States in a qualifying managerial or executive capacity; (2) that the Beneficiary was employed abroad in a qualifying managerial or executive capacity; and (3) that the Petitioner had the ability to pay the proffered wage at the time the Form I-140 petition was filed. We dismissed the Petitioner's appeal after reviewing the record of proceeding and determining that the Petitioner did not overcome any of the Director's grounds for denying the petition. In addition, we found that the record did not demonstrate that the Petitioner had been doing business in the United States for at least one year prior to filing the instant petition.

The Petitioner's motion to reconsider consists of a Form I-290B, Notice of Appeal or Motion, a letter, and paystubs issued to the Beneficiary by his former foreign employer for the year 2011.

I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this motion will be denied because the motion does not merit reconsideration.

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action: "[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision."

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service*," "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

> A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(*a*)] when filed, also [(*b*)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 4 of the Form I-290B, which states:

> **Motion to Reconsider**: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions when filed and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) ("Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); *see also Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

II. DISCUSSION AND ANALYSIS

The Petitioner's motion to reconsider consists of the following: (1) the Form I-290B; (2) a letter; and (3) documentary evidence, specifically many of the Beneficiary's pay stubs issued by his foreign employer in 2011.

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. § 103.5(a)(3) (detailing the requirements for a motion to reconsider).

In this matter, with respect to the Beneficiary's employment in the United States, the Petitioner asserts that we did not consider that the Beneficiary's duties are executive or the fact that he has an ownership interest in both the foreign entity and the petitioning entity. The Petitioner reiterates its previous assertions that the Beneficiary was involved at all levels of the business, had financial oversight and made decisions regarding the company's product lines, business expansion, and contractual agreements. The Petitioner does not assert that our decision was based on an incorrect application of law or policy. Further, the Petitioner reiterates previous facts and assertions that have we have already considered.

With respect to the Beneficiary's employment abroad, the Petitioner asserts that we did not recognize that the Beneficiary served as the vice president of the foreign company for several years. The Petitioner provided another general overview of the Beneficiary's duties along with a list of seven executive decisions that the Beneficiary made based on financial reports. The Petitioner does not assert that the decision was based on an incorrect application of law or policy. Further, the Petitioner reiterates previous facts and assertions that have already been considered. The Petitioner's submission of the Beneficiary's pay stubs from the foreign employer does not resolve the shortcomings of the petition as discussed in our decision on appeal.

With respect to the Petitioner's ability to pay the Beneficiary's proffered wage, the Petitioner asserts that we erred. Specifically, the Petitioner asserts that the I-140 petition is based on an approved Form I-129 nonimmigrant petition granting the beneficiary L-1 status and does not require a prevailing wage request. The Petitioner's reference to section 101(a)(15)(L) of the Act to support its claim that we erred in denying this immigrant petition is misplaced. We agree that a labor certification is not required for this immigrant petition but the Petitioner's assertion that "there is no requirement for the amount an employer must pay the transferee" is incorrect. As discussed in our decision, the regulation 8 C.F.R. § 204.5(g)(2) requires immigrant based employment petitions requiring an offer of employment to be accompanied by evidence of the U.S. employer's ability to pay the proffered wage.

Finally, the Petitioner does not address our finding that it has presented insufficient evidence to demonstrate that it had been doing business in the United States for one year at the time the petition was filed. When we deny a petition on multiple alternative grounds, a petitioner can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

We discussed the deficiencies in the Petitioner's evidence in considerable detail in our previous decision. In the current motion, the Petitioner does not articulate how our decision was based on an incorrect application of law or policy applicable to this immigrant visa classification. We conclude that the documents constituting this motion do not articulate how our decision on appeal misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the appeal was rendered. The Petitioner has therefore not submitted any document that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be denied.

III. CONCLUSION

The Petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be denied and our previous decision will not be disturbed.

ORDER: The motion to reconsider is denied.

Cite as *Matter of L-, Inc.*, ID# 14045 (AAO Oct. 1, 2015)