U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12094050

Date: NOV. 24, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an information technology services and consulting company, seeks to permanently employ the Beneficiary as its "Vice President – Technology" 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 an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that (1) the Beneficiary's U.S. employment would be in a managerial or executive capacity, and (2) the Beneficiary had been employed by the foreign entity in a managerial or executive position for at least one year in the three years preceding his entry into the United States. The Petitioner filed an appeal, which we summarily dismissed. The matter is now before us on a combined motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, the Petitioner has not met this burden. Accordingly, we will dismiss the combined motion to reopen and motion to reconsider.

I. LAW

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the 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 or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also 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

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Here, although the Petitioner's brief on motion addresses the Director's denial of the underlying petition, the subject of the prior decision was our summary dismissal of the Petitioner's appeal. As such, the issue in this matter is whether the Petitioner has either submitted new facts supported by documentary evidence sufficient to warrant reopening its appeal and/or established that our decision to summarily dismiss the appeal was based on an incorrect application of USCIS law or policy.

A. Prior AAO Decision

The regulations provide that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

At the time the Petitioner filed its appeal on November 14, 2019, it did not submit a statement identifying any erroneous conclusion of law or statement of fact as a basis for the appeal, as instructed on the Form I-290B. The Petitioner also submitted no brief or evidence with Form I-290B despite indicating that a brief and/or additional evidence was attached. When we reviewed the record of proceeding several months later, it did not include any supplement to the appeal. As a result, we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

B. Motion to Reopen

The Petitioner has submitted a brief and new evidence in support of its motion to reopen, but it has not provided new facts or new evidence that would overcome our decision to summarily dismiss its appeal. Although the Petitioner claims that we "incorrectly denied the appeal," the brief and new evidence submitted on motion address the Director's decision denying the underlying petition on its merits. The Petitioner does not submit evidence to demonstrate that a supplement to the appeal had in fact been submitted prior to our summary dismissal.

Absent new facts or evidence demonstrating that the Petitioner submitted the required statement in support of its appeal, it has not established with the current motion that the appeal should be reopened. Accordingly, the motion to reopen will be dismissed.

C. Motion to Reconsider

We will also dismiss the motion to reconsider, because the Petitioner has not shown that the summary dismissal of its appeal was incorrect based on the evidence of record at the time of the initial decision. As noted, the Petitioner does not contest our summary dismissal decision or claim that it was based on an incorrect application of law or policy; its legal arguments on motion solely address the Director's

decision to deny the underlying petition. For the reasons discussed, our summary dismissal decision was consistent with USCIS policy and the regulation at 8 C.F.R. § 103.3(a)(1)(v).

We will not consider the newly submitted motion brief discussing the merits of the case absent evidence that we summarily dismissed the appeal in error. The Petitioner has not provided such evidence or shown that the matter should be reopened or reconsidered. Accordingly, the combined motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.