U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-I-U- CORP.

DATE: SEPT. 10, 2015

MOTION OF AAO DECISION

PETITION: FORM I-129, PETITION FOR NONIMMIGRANT WORKER

The Petitioner, a corporation organized in the State of New Jersey that engages in the wholesale of general merchandise, seeks to extend the employment of its vice-president as an L-1A nonimmigrant intracompany transferee. *See* section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The Petitioner has subsequently filed a total of three appeals and nine motions with the Administrative Appeals Office (AAO). Most recently, we dismissed the Petitioner's motion to reopen and reconsider in a decision dated January 8, 2015. The matter is again before us on a motion to reopen and reconsider. The motion will be denied.

The Director denied the petition on February 24, 2004, concluding that the Petitioner did not establish that the Beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Although we summarily dismissed the Petitioner's appeal on February 1, 2006, the Petitioner subsequently filed a motion to reopen that was granted for the purpose of considering a timely filed appellate brief that had not been incorporated into the record prior to our initial decision. As discussed in our previous decisions, we issued a 14-page decision affirming the Director's decision to deny the petition and we dismissed the appeal on May 17, 2007.

On June 14, 2007, the Petitioner filed a second appeal, which we rejected as improperly filed on December 4, 2007, noting that we do not exercise appellate jurisdiction over our own decisions. We also found that the appeal did not meet the requirements for a motion to reopen or reconsider. On January 4, 2008, we reviewed and dismissed a subsequent motion, which was followed by a third appeal, despite the fact that the Petitioner had been previously informed that multiple appeals on a single petition are not allowed. Accordingly, we rejected the appeal on November 25, 2008 and once again noted that we do not exercise appellate jurisdiction over our own decisions. The Petitioner proceeded to file four subsequent motions to reopen and reconsider, all of which were dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4), based on the Petitioner's failure to satisfy applicable filing requirements. The Petitioner's subsequent filing was a fifth motion to reopen and reconsider in which the Petitioner asked us to consider a supporting brief, which the Petitioner did not submit simultaneously with the Form I-290B, Notice of Appeal or Motion, filed on April 26, 2013. Rather, the Petitioner altered Part 2, subsection F of the Form I-290B from the original version, which states, "My brief and/or additional evidence is attached," to read the following: "My brief and/or additional evidence will be submitted in 90 days (ninety)." It is noted

that the brief was not incorporated into the record prior to our review of the Petitioner's motion, thus leading us to conclude that the Petitioner did not provide evidence to support the motion to reopen and reconsider. The basis for the subsequent (sixth) motion was to request consideration of additional evidence and a supporting brief, which was intended to be submitted in support of the motion that was filed on April 26, 2013. Both motions were dismissed. The Petitioner's subsequent (seventh) motion was dismissed as the Petitioner did not submit evidence to meet the requirements of filing a motion, and the Petitioner's subsequent (eighth) motion was dismissed because the Petitioner, again, altered Part 3, subsection 2.f. of the Form I-290B from the original version to reflect that a brief and/or additional evidence "will be submitted in 90 days."

In this matter, its ninth motion filed on March 2, 2015, the Petitioner submits a copy of the same brief submitted with its seventh motion, filed June 13, 2014 and dismissed September 25, 2014. In its brief, again, the Petitioner maintains its objections to the analysis contained in the Director's original decision, with an issue date of February 24, 2004, and further contends that the very fact that we upheld the Director's decision indicates that we failed to apply the current law, regulation, or policy. The Petitioner lists a number of federal court decisions in an effort to establish that it has complied with 8 C.F.R. § 103.2(a)(1) and that "ignoring this fact of due compliance, [sic] is another instance of Abuse of Discretion."

As we shall now discuss, the motion was filed late and therefore must be dismissed.

The provision at 8 C.F.R. § 103.5(a)(4), *Processing motions in proceedings before the Service,* provides that "[a] motion that does not meet applicable requirements shall be dismissed."

The pertinent section of the motion regulations, 8 C.F.R. § 103.5(a)(1)(i), states:

> *[A]ny motion to reconsider an action* by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. *Any motion to reopen a proceeding* before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Emphasis added.

The date of filing is not the date of mailing, but the date when U.S. Citizenship and Immigration Services (USCIS) receives the intended motion (1) completed, signed, and accompanied by the

required fee as specified by the Form I-290B instructions; and (2) at the location that those instructions designate for filing motions.[1]

Neither the Act nor the pertinent regulations grant us the authority to extend the 33-day time limit for filing a motion to reconsider. The regulations do permit USCIS, in its discretion, to excuse the untimely filing of the motion-to-reopen component of this joint motion were it demonstrated that the delay was both (*a*) reasonable and (*b*) beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). However, upon review of all of the submissions constituting the motion we find no basis for finding that the untimely filing was either reasonable or beyond the control of the Petitioner in this matter.

We issued the decision that is the subject of this motion on January 8, 2015. We note that the petitioner initially submitted its Form I-290B on February 17, 2015, 40 days after our decision, which was rejected, and ultimately filed its Form I-290B on March 2, 2015, 53 days after our decision. Accordingly, the motion was untimely filed.

As the record does not establish that the failure to file the motion to reopen within 33 days of the decision was reasonable and beyond the affected party's control, and as there is no such provision for motions to reconsider, the combined motion is untimely and must be dismissed for that reason.

Although the late filing of the joint motion requires the motion's dismissal, we shall also address in summary fashion why the joint motion would have to be dismissed even if it had been timely filed.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Here, the Petitioner has not submitted any new evidence. Therefore, the Petitioner has not satisfied the requirements of a motion to reopen.

Next, with regard to the motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. . . .

As in our prior decisions, we stress again that in order to have established merit for reconsideration of our latest decision the Petitioner must both: (1) state the reasons why the petitioner believes *the most recent decision* was based on an incorrect application of law or policy; and (2) specifically cite

[1] *See* 8 C.F.R. §§ 103.2(a)(1) ("every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions" and with whatever fees are required by regulation); 103.2(a)(6) (form instructions specify filing location).

laws, regulations, precedent decisions, and/or binding policies that the petitioner believed we misapplied in our prior decision.

Moreover, as we cautioned in our earlier decisions, a motion to reconsider cannot 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, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, 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 decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

As the Petitioner's primary objections, again, focus on findings that the Director made in his original decision denying the petition, it is apparent that the Petitioner had ample opportunity to express its concerns earlier in these proceedings. The Petitioner cannot take the opportunity to file a ninth motion in order to address findings that could have and should have been addressed in an appellate brief. Moreover, the record shows that this office granted the Petitioner's first motion for the specific purpose of reopening these proceedings and addressing the Petitioner's assertions, which were made in an attempt to establish that the Petitioner and the Beneficiary met the statutory and regulatory requirements at the time the petition was filed. Based on the statement that the Petitioner submitted in support of this latest motion, it appears that the Petitioner once again seeks to address matters that were already addressed on appeal.

Further, while the Petitioner clearly understands that its motion to reconsider must be supported by statutes, regulations, or precedent decisions, the Petitioner provided no discussion of the facts pertaining to any of the nine court cases it listed in its supporting statement. Therefore, the Petitioner has not established that any of the cited cases are relevant to the matter at hand; nor has the Petitioner established that these cases support a finding that we misapplied a law or service policy in denying the motion in our latest decision. Contrary to the Petitioner's belief, conducting a *de novo* review of the record does not obligate us to repeatedly re-adjudicate issues that were already addressed on appeal. The Petitioner's understanding that we have abused our discretion appears to be entirely premised on the fact that we did not find the Petitioner to be eligible for the immigration benefit sought and as a consequence issued an adverse decision. As the Petitioner has not established that we committed legal error in our prior decision, we are unable to grant the Petitioner's motion.

For the foregoing reasons, the instant motion does not meet the requirements of a motion to reconsider. The motion does not establish that our decision dated January 8, 2015 dismissing the previous motion was in error, as required by 8 C.F.R. § 103.5(a)(3).

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

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 dismissed, the proceeding will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is denied.

Cite as *Matter of B-I-U- Corp.*, ID# 13168 (AAO Sept. 10, 2015)