U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6987162

Date: AUG. 31, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Executive or Manager

The Petitioner, which operates a gas station and convenience store, seeks to permanently employ the Beneficiary as its president 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 Texas Service Center denied the petition on multiple grounds, determining that the Petitioner did not establish, as required, that (1) that the Beneficiary was employed in a managerial or executive capacity abroad for at least one year in the three years preceding his entry as a nonimmigrant; (2) it has a qualifying relationship with the Beneficiary's claimed foreign employer; and (3) the Beneficiary would be employed in a managerial capacity in the United States. The Director also determined that the Petitioner and Beneficiary had willfully misrepresented material facts in support of this petition and that the Beneficiary had previously committed marriage fraud and was therefore ineligible for the benefit sought under section 204(c) of the Act, 8 U.S.C. § 1154(c).

The Petitioner subsequently filed a motion to reconsider, which the Director dismissed based on a determination that the motion was untimely and incomplete. The matter is now before us on appeal.

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 de novo review, we 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).

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 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 U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

Although the Petitioner's appellate brief primarily addresses the Director's initial denial decision, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director's subsequent finding that its motion to reconsider did not meet the filing requirements at 8 C.F.R. § 103.5(a)(1). Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us is whether the Director properly found that the Petitioner did not meet the filing requirements applicable to motions. A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The Director dismissed the Petitioner's motion to reconsider because it was untimely, and noted that certain sections of the Form I-290B, Notice of Appeal or Motion, were not complete. The Director issued the decision denying the Form I-140 on February 9, 2018, and the Petitioner filed the Form I-290B on November 5, 2018, 269 days later. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a motion to reconsider must be filed by the petitioner within 30 days of the decision that the motion seeks to reconsider.

At the time the Petitioner filed the motion to reconsider, it explained that it was being filed untimely because it had not yet received a copy of the denial notice issued on February 9, 2018. We note that, under 8 C.F.R. § 103.5(a)(1)(i), the failure to timely file a motion to reopen within 30 days may be excused in the discretion of USCIS where it was demonstrated that the delay was reasonable and was beyond the control of the petitioner. However, the same discretion does not apply to untimely motions to reconsider. The record also reflects that the decision denying the Form I-140 was mailed to the Petitioner's address of record at the time of issuance. Accordingly, we find that the motion to reconsider was properly dismissed as untimely filed.

With the instant appeal, the Petitioner once again claims that the late of filing of the motion was beyond its control, but, for the reasons discussed, it has not established that the Director's dismissal of the motion to reconsider was based on an erroneous conclusion of law or statement of fact. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.