U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21562449

Date: OCT. 6, 2022

Motions on Administrative Appeals Office Decision

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

The Petitioner, a jewelry wholesaler, seeks to permanently employ the Beneficiary as its president/general manager. The company requests his classification under the first-preference, immigrant visa category as a multinational manager or executive. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval. We dismissed the Petitioner's appeal and the company's following three combined motions to reopen and reconsider. We agreed with the Director that the Petitioner did not demonstrate a qualifying relationship with the Beneficiary's foreign employer, or the required managerial or executive nature of his employment abroad and his proposed work in the United States. After dismissing the Petitioner's fourth round of combined motions as untimely, we dismissed the company's most recent motion to reconsider because the filing did not demonstrate the timeliness of the fourth-round motions. *See In Re: 19219403* (AAO Jan. 12, 2022).

The matter returns to us on another round of combined motions to reopen and reconsider. The Petitioner continues to argue that a courier service's unexpected delay in delivering the Petitioner's fourth round of combined motions warrants the filings' acceptance as timely. Upon review, we consider the prior motions as timely filed but find that they do not demonstrate eligibility for the requested benefit. We will therefore dismiss all motions.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our most recent decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and establish eligibility for the requested benefit.

II. THE MOTION TO REOPEN

The Petitioner's current motion to reopen includes copies of the business's federal income tax returns for 2019-20 and 2020-21. These documents do not relate to the timeliness of the Petitioner's fourth round of combined motions or the underlying grounds for revocation of the petition's approval. Thus, the materials do not establish eligibility for the requested benefit. We will therefore dismiss the motion to reopen.

III. THE MOTION TO RECONSIDER

The Petitioner asks us to reconsider the timeliness of the company's fourth round of combined motions to reopen and reconsider. Upon reconsideration, we note that our last decision incorrectly stated the motions' filing deadline. At that time, because of the COVID-19 pandemic, USCIS had extended filing deadlines for motions from 30 to 60 days. *See* "USCIS Extends Flexibility for Responding to Agency Requests" (Sep. 11, 2020), https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1. We therefore found that the Petitioner had to file its motions within 60 days of December 22, 2020, the date of the prior, unfavorable decision. *In Re: 19219403*, at 2. Because we sent the prior decision to the Petitioner by regular mail, however, we should have added three days to the filing deadline. *See* 8 C.F.R. § 103.8(b). The Petitioner therefore had to file its motions *not* by February 20, 2021, but by February 23, 2021, *63* days after the decision.[1]

Our most recent decision cited a precedent case in which the Board of Immigration Appeals (BIA) refused to excuse a late filing by finding "exceptional circumstances" and certifying the case to itself. *Matter of Liadov*, 23 I&N Dec. 990, 993 (BIA 2006) (referring to 8 C.F.R. § 1003.1(c)). In *Liadov*, an overnight courier service received a document from noncitizens "at most, 48 hours before the filing deadline." *Id.* at 992. Using the incorrect 60-day filing deadline, we reasoned that the Petitioner, like the respondents in *Liadov*, gave its documents to a delivery service within two days of its filing deadline. Under the correct 63-day deadline, however, the delivery service received the Petitioner's motions *four* days before the deadline.

Also, unlike in *Liadov*, the courier service delivered the Petitioner's filings more than one day late. We did not receive the Petitioner's motions until March 4, 2021, nine days after the 63-day filing deadline. In *Liadov*, the BIA suggested that such circumstances could warrant certifying a case to itself. 23 I&N Dec. at 992. The Board stated that "a delivery delay might excuse untimeliness in a rare case, such as where the delivery was very late." Further, the U.S. Court of Appeals for the Second Circuit, which has jurisdiction over the Petitioner's state of incorporation and the proposed worksite in this matter, has stated that use of an overnight delivery service "strongly suggests to us that the failure of such an effort to achieve timely filing may well, indeed, fall within the realm of the 'extraordinary.'" *Sun v U.S. Dep't of Justice*, 421 F.3d 105, 111 (2d Cir. 2005). Thus, under the particular circumstances of this case in this jurisdiction, we will consider the Petitioner's fourth round of combined motions to be timely filed and review them.

[1] February 20, 2021 fell on a Saturday. The Petitioner's motions were therefore due on Monday, February *22*, 2021 - the next non-holiday business day. *See* 8 C.F.R. § 1.2 (defining the term "day" for purposes of computing filing deadlines).

IV. THE PRIOR MOTIONS

A. The Motion to Reopen

We affirmed revocation of the petition's approval, in part, finding insufficient evidence that the Beneficiary would primarily work in a managerial capacity. The Petitioner's prior motion to reopen contained letters from presidents of five other wholesale jewelry businesses. The letters state that, because of the merchandise's high value, U.S. customs officials send invoices in the name of jewelry store owners and presidents to hold them personally responsible for paying international shipping duties.

The letters support the Petitioner's contention that, although its previously submitted copies of customs invoices bear the Beneficiary's name, they do not indicate his personal processing of the bills. Thus, contrary to our prior finding, the Petitioner's customs invoices do not establish the Beneficiary's performance of that operational duty. But the record still lacks sufficient evidence that he would "primarily" perform managerial duties as claimed. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A) (defining the term "managerial capacity").

The prior motion to reopen also included copies of travel invoices and itineraries showing that some of the Petitioner's sales representatives attended jewelry trade shows. We previously faulted the business for omitting such corroborative documentation. The evidence's submission bolsters the Petitioner's general credibility.

Nevertheless, the new evidence is insufficient to demonstrate the business's proposed employment of the Beneficiary in the claimed managerial capacity. The evidence does not explain discrepancies in the Petitioner's descriptions of the Beneficiary's job duties or demonstrate his supervision of employees or performance of other managerial-level duties. *See* section 101(a)(44)(A)(ii) of the Act (requiring a manager to "supervise[] and control[] the work of other supervisory, professional, or managerial employees").

B. The Motion to Reconsider

We previously rejected the Petitioner's argument that its two versions of the Beneficiary's proposed job duties do not conflict. We found that the first version indicated his performance of many operational duties and that, without sufficient explanation, the second version attributed many of those duties to a subordinate sales/marketing manager. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve discrepancies of record with independent, objective evidence pointing to where the truth lies).

In the prior motion to reconsider, the Petitioner argued that the organizational chart accompanying the petition notified USCIS of the Beneficiary's subordinate manager. The Petitioner therefore contended that the petition showed that the Beneficiary would supervise the sales/marketing manager when he performed many of the job duties.

The initial organizational chart, however, did not specifically include a description of the sales/marketing manager's duties. Also, the first version of the Beneficiary's job duties did not specify

his proposed supervision of the sales/marketing manager, and the omission conflicted with the organizational chart. The record therefore does not support the Petitioner's argument. The business's explanations of the discrepancies in the Beneficiary's proposed job duties do not establish that he would primarily work in a managerial capacity. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve discrepancies of record with independent, objective evidence).

Also, the Petitioner's prior motion to reconsider contended that the business established the professional nature of the sales/marketing manager's position. *See* section 101(a)(44)(A)(ii) of the Act (requiring a manager to supervise and control the work of another supervisory, professional, or managerial employee). The business pointed to a U.S. Bureau of Labor Statistics publication listing a U.S. bachelor's degree as a typical requirement for a sales manager. *See* Occupational Outlook Handbook, https://www.bls.gov/ooh/management/sales-managers.htm#tab-1. The Petitioner also noted its previous submission of reasons why the job's duties require a U.S. bachelor's degree or its equivalent.

The labor publication, however, lists many job duties for sales managers that the Petitioner's job-duty description for the sales/marketing manager position omits. For example, the Petitioner's job duties do not include: resolving customer complaints; preparing budgets and approving expenditures; monitoring customer preferences; analyzing sales statistics; projecting sales; and determining discount rates or special pricing plans. Because of their different job duties, the record does not demonstrate that the position in the labor publication matches the offered job. The publication therefore does not establish that the offered job requires a U.S. baccalaureate equivalency as a "professional" position requires.[2]

Also, the Petitioner has not demonstrated that the person in its position of sales/marketing manager has a bachelor's degree. The business submitted a copy of the manager's bachelor of commerce degree from India. But, according to the Electronic Database for Global Education (EDGE), an online resource that federal courts have found to be a reliable source of foreign educational equivalencies, Indian bachelor of commerce degrees typically reflect three years of college or university.[3] In contrast, a U.S. bachelor's degree typically requires four years of studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). Thus, as the record does not establish that the Petitioner's current sales/marketing manager has a U.S. baccalaureate equivalency, the business has not demonstrated the position's need for one. For the foregoing reasons, the Petitioner's prior motion to reconsider does not establish the business's proposed employment of the Beneficiary in the claimed managerial capacity.

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[2] *See generally* 8 C.F.R. § 204.5(k)(2) (defining the term "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").

[3] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRO), a non-profit group of more than 11,000 higher education professionals representing about 2,600 institutions in more than 40 countries. ACCRAO, "Who We Are," https://www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

Further, neither the prior motion to reopen nor motion to reconsider addresses the other grounds revoking the petition's approval.[4] We not only found insufficient evidence of the claimed managerial nature of the Petitioner's proposed employment of the Beneficiary, but also of the required managerial or executive nature of his employment abroad and the Petitioner's claimed qualifying relationship to his foreign employer. *See* section 203(b)(1)(C) of the Act (requiring a multinational manager's employment abroad by a parent, subsidiary, or affiliate of the U.S. employer). Thus, the motions' failures to address the other revocation grounds also prevent them from establishing eligibility of the Petitioner and the Beneficiary for the requested benefit.

V. CONCLUSION

The Petitioner's motion to reopen does not establish eligibility for the requested benefit. On reconsideration, we considered the business's prior combined motions to be timely filed and reviewed them. But they also do not establish eligibility for the requested benefit. Thus, we will dismiss all motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] We consider issues or claims omitted on appeal or motion to be "waived." *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).