U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27098718

Date: MAY 18, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, an engineering consulting business, 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, and we dismissed the Petitioner's subsequent appeal, concluding that the record did not establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.[1] The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

Although the Petitioner's motion includes a "brief in support of motion to reopen and reconsider," it does not state new facts and is not supported by documentary evidence. Therefore, the Petitioner's submission does not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2).

[1] Because the identified basis for dismissal was dispositive of the Petitioner's appeal, we reserved and declined to reach the Petitioner's appellate arguments regarding the Director's separate determinations that the record did not establish that (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary would be employed in the United States in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

In its brief, the Petitioner contests the correctness of our prior decision and maintains that it met its burden to establish a qualifying relationship with the Beneficiary's prior employer abroad. In support of the motion, the Petitioner relies on the regulatory definition of "subsidiary" applicable to nonimmigrant petitions for L-1 intracompany transferees at 8 C.F.R. § 214.2(l)(1)(ii)(K).[2] The Petitioner also suggests that we erroneously considered information of its ownership and control found in its 2017 corporate income tax return, emphasizing that "any documents reflecting the condition of the company prior to [the date of filing] would be ineffectual considering that USCIS has stated many times that any supporting documents must be effective at the time of filing, not before or afterwards."

For the reasons provided below, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy and that it was incorrect based on the evidence in the record at the time of our prior decision.

In our decision dismissing the appeal, which we incorporate by reference here, we acknowledged the Petitioner's claim that it is a subsidiary of the Beneficiary's last foreign employer located in Syria, observed that the Petitioner had also claimed to be a branch of the foreign entity, and considered whether there was sufficient evidence to establish, in the alternative, that the Petitioner and foreign entity have a qualifying relationship as "affiliates" as defined at 8 C.F.R. § 204.5(j)(2). We determined that, due to unresolved inconsistencies, omissions, and other deficiencies in the evidence, the record did not support a determination that the Petitioner is a subsidiary, branch, or affiliate of the foreign entity, and the Petitioner therefore it did not meet its burden to establish the qualifying relationship required by statute and regulation. *See* section 203(b)(1)(C) of the Act and 8 C.F.R. § 204.5(j).

On motion, the Petitioner suggests that we placed undue reliance on the company's 2017 tax return, and specifically on the ownership information reported on the accompanying Schedules K-1. Our prior decision reflects that we considered all evidence submitted in support of the claimed qualifying relationship, including: the Petitioner's certificate of formation and corporate bylaws; a joint venture agreement executed in 2012; copies of stock certificates issued to the Beneficiary and two other individuals in 2013; two stock transfer agreements executed in 2018; copies of the company's federal tax returns with accompanying Schedules K-1 for the years 2017 through 2020; and copies of the foreign entity's "Certificates of Corporate Registration" issued by the Syrian government.

We concluded that, despite several references to the foreign entity as a "parent" company, the record lacked objective evidence demonstrating that it held any ownership interest in the Petitioner at the time of filing, and therefore the record did not support a determination that the two entities have a parent-subsidiary relationship. *See* 8 C.F.R. § 204.5(j)(2) (defining "subsidiary"). Although the Petitioner provided an executed "joint venture agreement" identifying the foreign entity as a "parent company" in 2012, the Petitioner also provided evidence that it issued stock certificates to three individual shareholders in 2013 and appears to have been owned by two individuals as of 2018 when the petition was filed.[3] With respect to the Petitioner's claim that it is a "branch" of the foreign entity,

[2] The regulatory definition of "subsidiary" applicable to immigrant petitions for multinational managers and executives filed under section 203(b)(1)(C) of the Act is located at 8 C.F.R. § 204.5(j)(2) and is identical to the "subsidiary" definition in the cited L-1 regulations.

[3] In this regard, we emphasized that there were discrepancies in the record regarding the Petitioner's ownership and that the record lacked additional objective evidence, such as the company's stock transfer ledger and copies of all stock

we emphasized that the Petitioner, which is incorporated in the State of Texas, is a separate legal entity and is therefore not an operating division or office of the foreign entity located in the United States.[4]

We also considered whether there was sufficient evidence to demonstrate that the Petitioner and foreign entity have an affiliate relationship based on ownership by a common parent, individual or group of individuals. *See* 8 C.F.R. § 204.5(j)(2) (defining the term "affiliate"). However, we explained why the evidence submitted did not sufficiently document the ownership and control of either the foreign entity or the U.S. entity. As a result, we concluded that the Petitioner did not meet its burden to establish that the two entities are, more likely than not, related as affiliates.

Although the Petitioner contests the correctness of the prior decision, it does not specifically address how we misapplied relevant law or USCIS policy in concluding that it did not establish a qualifying relationship with the foreign entity. To the extent that the Petitioner cites to relevant authorities, its claims are limited to the previously claimed parent-subsidiary relationship between the two entities. The Petitioner states that it transferred some of its stock to the Beneficiary but nevertheless "still owns, directly or indirectly less than half of the entity, but in fact controls the entity," while referring to the regulatory definition of subsidiary. As noted, to establish that it is a subsidiary of the foreign entity in Syria, the Petitioner must submit evidence establishing the foreign entity's direct or indirect ownership and control of the U.S. company. The record lacks objective evidence demonstrating that the foreign entity ever owned any shares of the Petitioner's stock and does not support its apparent claim on motion that the foreign entity currently owns less than half of its issued shares but in fact controls the company. Therefore, the Petitioner has not established with the instant motion that it is a subsidiary of the foreign entity, or that the two entities otherwise have the qualifying relationship required for the requested immigrant visa classification.

We may grant motions that satisfy the regulatory requirements at 8 C.F.R. § 103.5(a)(2) or (3) and demonstrate eligibility for the requested benefit. Here, the Petitioner has not established new facts sufficient to overcome our previous decision. Nor has the Petitioner established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision and that it is eligible for the benefit sought. Consequently, the Petitioner has not met the applicable requirements for either a motion to reopen or a motion to reconsider. The motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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certificates issued to date, which may resolve those discrepancies and substantiate the total number of shares issued to each shareholder.

[4] The regulations at 8 C.F.R. § 204.5(j)(2) do not include a definition of the term "branch." The L-1 nonimmigrant visa regulations define "branch" as an operating division or office of the same organization housed in a different location. *See* 8 C.F.R. § 214.2(l)(1)(ii)(J). Domestic offices of a foreign employer operated as a branch (that is, not as a separate, domestic legal entity) may not offer permanent employment to a beneficiary for the purpose of obtaining an immigrant visa for a multinational executive or manager. *See generally*, 6 *USCIS Policy Manual* F.4(B)(3), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-4.