U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22065154

Date: APRIL 7, 2022

Motion on Administrative Appeals Office (AAO) Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, an internet research resource business, sought to temporarily employ the Beneficiary as chief executive under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The original L-1-A petition was approved in 2015 for a two-year period, and a second L-1A petition was approved in 2017 to extend the Beneficiary's employment as an intracompany transferee through November 15, 2018. Following a site visit of the Petitioner's premises in [redacted] 2019 by the Fraud Detection and National Security Directorate (FDNS) of U.S. Citizenship and Immigration Services (USCIS) in [redacted] Georgia, the Director of the Texas Service Center issued a notice of intent to revoke (NOIR) the approved petition on July 29, 2020. After receiving the Petitioner's response to the NOIR, the Director issued a decision on December 8, 2020, revoking the petition's approval. As grounds for revocation the Director determined that the Petitioner did not establish that it was continuing to do business, as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H), or that the Beneficiary was working in a managerial or executive capacity, as defined in sections 101(a)(44)(A) and (B) of the Act.

On January 7, 2021, the Beneficiary filed an appeal (receipt number [redacted]). On the Form I-290B (Notice of Appeal or Motion) the Petitioner indicated that it would submit a brief and/or additional evidence to the AAO within 30 days. However, no such brief or evidence was submitted to the AAO. Therefore, on May 26, 2021, the AAO summarily dismissed the appeal in accordance with 8 C.F.R. § 103.3(a)(1)(v), which states that USCIS "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."

On October 20, 2021, the Petitioner filed a motion to reopen and motion to reconsider (receipt number [redacted]). However, the combined motion was not filed within the expanded 63-day period allowed by USCIS for appeals and motions of unfavorable decisions issued between March 1, 2020, and October 31, 2021, due to the COVID-19 pandemic. *See* https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1. The Petitioner's filing on October 20, 2021, was 147 days after the AAO's summary dismissal of the appeal on May 26, 2021. Therefore, on February 8, 2022, we dismissed the motion(s) as untimely filed.

The matter is now before us on a second motion to reopen and motion to reconsider, timely filed on March 4, 2022. A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the previous decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Since the previous combined motion was dismissed on the ground that it was not timely filed, the threshold issue we must consider now is whether the Petitioner has overcome that finding. If not, then the motion fails and we need not address the substantive grounds of the Director's revocation decision. For the reasons discussed below, the Petitioner has not overcome the late filing determination of our previous decision.

The current motion is accompanied by documentation already in the record relating to the Petitioner's appeal of the revocation decision and its first combined motion to reopen and reconsider, including a series of rejection and fee notices from USCIS and correspondence between the Petitioner's attorney and the USCIS Lockbox Support Team in Phoenix, Arizona. Also submitted with the current motion(s) is a copy of the brief previously submitted in support of the first combined motion to reopen and reconsider, which was dated June 18, 2021, but not received by USCIS until the motion was filed four months later in October 2021. These materials show that numerous attempted filings by the Petitioner were initially rejected because the filing fees were not sent to the correct location – the USCIS Lockbox in Phoenix, Arizona. The record indicates that the Petitioner did not follow the instructions on its original Form I-290B to submit its appeal brief to the AAO, nor the instructions in the Director's revocation decision and the AAO's summary dismissal of the appeal to obtain "the latest information of fee, filing location, and other requirements" for Form I-290B filings by consulting the government website, www.uscis.gov/i-290B. As a result of these procedural errors by the Petitioner, its appeal brief was not timely received at the AAO and its first combined motion to reopen and reconsider was not timely filed with USCIS.[1]

The Petitioner has not submitted any new facts in support of the current motion to reopen, as required by 8 C.F.R. § 103.5(a)(2). Nor has the Petitioner shown that our previous decision on February 8, 2022, determining that the initial combined motion to reopen and reconsider was not timely filed, was based on any incorrect application of law or USCIS policy, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). As the Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, the current motions to reopen and reconsider will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] Correspondence between the Petitioner's attorney and the USCIS Lockbox Support Team in Phoenix, Arizona, indicates that the filing fee(s) for the first combined motion to reopen and reconsider, as well as a second appeal (receipt number [redacted]), were mistakenly sent to the Vermont Service Center instead of the lockbox in Phoenix.