U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20216250

Date: MAY 12, 2022

Motion on Administrative Appeals Office (AAO) Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, an e-commerce and frame store business, seeks to temporarily employ the Beneficiary as chief financial officer 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 Director of the Vermont Service Center denied the petition on the grounds that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner appealed that decision to the AAO, asserting that the Beneficiary's U.S. employment would be in an executive capacity. We dismissed the appeal, affirming the Director's determination that the Petitioner did not establish that the Beneficiary would be working in an executive capacity.

The Petitioner has filed a series of motions to reopen or reconsider since then. The third such motion, a motion to reopen, was late filed and we dismissed it on that basis, citing the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*). The Petitioner's fourth motion, a motion to reconsider the late filing dismissal, was also dismissed. In that decision we noted that U.S. Citizenship and Immigration Services (USCIS) may excuse the untimely filing of a motion to reopen or reconsider if the petitioner demonstrates that the delay was reasonable and beyond its control, citing the regulation at 8 C.F.R. § 103.5(a)(1). In this case, however, the Petitioner had not demonstrated, or even asserted, that the delay in filing its motion to reopen in January 2020 was reasonable or beyond its control.

The matter is now before us on the Petitioner's fifth motion. It is a motion to reconsider, which must establish that our previous decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3).

Addressing the reason for the late filing of its motion to reopen in January 2010 – which was received 37 days after the date of our decision dismissing the second motion to reconsider, and thus did not meet the 33-day filing deadline prescribed in 8 C.F.R. §§ 103.5(a)(1) and 103.8(b) – the Petitioner claims that it thought the 33-day requirement would be measured in business days rather calendar days, resulting in a timely filed motion. The pertinent regulations do not state whether the 33-day filing period refers to calendar days or business days, but the term "day" normally means any calendar day and does not exclude weekend days or holidays. Absent specific language in the regulations

stating that "days" referred only to business days and not to Saturdays, Sundays, and holidays, it was not reasonable for the Petitioner to assume that the filing period was measured in business days rather than calendar days. It was entirely within the Petitioner's control to file its motion to reopen within the 33-day period allowed in the regulations, but it failed to do so. As the Petitioner has not demonstrated that the late filing of its motion to reopen was reasonable or beyond its control, we will not exercise our discretion under 8 C.F.R. § 103.5(a)(1) to excuse the late filing.

The Petitioner has not shown that our last decision, dismissing the previous motion to reconsider, was based on any incorrect application of law or USCIS policy, as required under 8 C.F.R. § 103.5(a)(3). As the Petitioner has not shown proper cause for reconsideration of our previous decision, we will dismiss the current motion to reconsider.

ORDER: The motion to reconsider is dismissed.