U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29077823

Date: NOV. 13, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 employment-based 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 Nebraska Service Center denied the petition and dismissed the Petitioner's subsequent combined motions to reopen and reconsider, concluding that the record did not establish that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity; that the Petitioner was doing business for at least one year at the time it filed this petition in March 2018; and that the Beneficiary's foreign employer continued to do business abroad. We dismissed the Petitioner's appeal, determining that the record did not establish that its foreign parent company continues to do business abroad as defined in the regulations.[1] The Petitioner subsequently filed two combined motions to reopen and reconsider, which we also dismissed.[2] The matter is now before us again 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 motions.

In our latest decision, which we incorporate here by reference, we dismissed the Petitioner's prior combined motion to reopen and reconsider. With that motion, the Petitioner had submitted additional

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[1] "Doing business" means the regular, systematic, and continuous provision of good and/or services by a firm, corporation or other entity and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2). A U.S. petitioner seeking to employ a multinational manager or executive must demonstrate that it, or its affiliate, subsidiary, or parent, conducts business in the United States and in at least one other country. *See id*. (defining "multinational").

[2] Because the identified basis for denial was dispositive of the Petitioner's appeal, we reserved and did not address the Petitioner's appellate arguments regarding whether it had been doing business for at least one year at the time of filing, and whether the Beneficiary had been employed abroad, and would be employed in the United States, in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

evidence intended to document its parent company's ongoing business activities in China. It also contended that we had erroneously disregarded probative evidence of foreign business activities submitted in support of its first motion on the grounds that it had not provided certified English translations that complied with the regulation at 8 C.F.R. § 103.2(b)(iii).[3] Specifically, the Petitioner asserted that it did in fact include a certificate of translation with its first motion and that we erred by failing to consider the new evidence offered.

In dismissing the second motion before us, we noted that the Petitioner had submitted, with both motions, a single certificate of translation signed by a translator, which referred broadly to the individual's translation of unidentified "attached Chinese documents." However, we observed that, for a translation to be valid under 8 C.F.R. § 103.2(b)(iii), the translator's certificate must identify the specific foreign language document(s) that they translated. Here, the blanket certificate of translation, which appears to have been photocopied and submitted to USCIS multiple times during these proceedings, did not identify the documents the translator purportedly translated; therefore, we deemed it insufficient to satisfy this regulatory requirement. As such we concluded that the Petitioner had not provided proper cause for reopening or reconsidering our prior decision.[4]

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

Although the Petitioner submitted a brief in support of the instant motion, the brief does not state new facts and is not supported by documentary evidence.[5] In fact, the brief, while acknowledging that we dismissed the most recent prior motion on May 23, 2023, is almost identical in content to the brief the Petitioner submitted in support of its appeal in 2020. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. Therefore, the Petitioner's submission does not meet the requirements of a motion to reopen at 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).

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[3] The regulation at 8 C.F.R. § 103.2(b)(iii) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

[4] As noted, in adjudicating the Petitioner's appeal and motions, we reserved the three remaining grounds for denial of the underlying petition. However, in our latest decision, we observed that additional evidence submitted in support of the motion, which was intended to document the Petitioner's latest staffing levels and ongoing operations in the United States, undermined its claim it would employ the Beneficiary in a managerial or executive capacity as defined at section 101(a)(44)(A) or (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) or (B).

[5] The cover letter accompanying the instant motion contains a general reference to "additional evidence" supporting the motion. However, the record reflects that the motion consists of a Form I-290B, Notice of Appeal or Motion, a brief, and a copy of our decision dated May 23, 2023, in which we dismissed the Petitioner's second combined motions to reopen and reconsider. The Petitioner's motion does not include the referenced "additional evidence."

In a brief accompanying the instant motion, the Petitioner requests that we review the documents it previously submitted in support of the Form I-140, Immigrant Petition for Alien Worker, in response to the Director's request for evidence, and in support of its initial combined motion to reopen and reconsider, which was dismissed by the Director. As noted, the brief is nearly identical to the brief the Petitioner submitted in support of its appeal in 2020; it does not address or contest our latest decision issued on May 23, 2023, and our reasons for dismissing its previous motion. Rather, it alleges error in the Director's prior decisions.

As emphasized above, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in the current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). The Petitioner has not stated any reasons for reconsideration of our May 2023 decision dismissing its immediate prior motion to reopen and motion to reconsider, nor does it argue that our 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 proceeding at the time of the decision. The Petitioner's submission does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

For the reasons provided, the Petitioner has not shown proper cause for reopening or reconsideration. Accordingly, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.