U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28918834

Date: OCT. 23, 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 Petitioner subsequently filed combined motions to reopen and reconsider, which we also dismissed. The matter is now before us on motion to reopen.

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 motion.

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).

On motion, the Petitioner submits a brief in which it maintains that the previously submitted evidence was sufficient to establish its qualifying relationship with the Beneficiary's foreign employer. It

[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).

further states that since U.S. Citizenship and Immigration Services (USCIS) "fails to acknowledge" this qualifying relationship, it offers, in the alternative, the following argument:

> The regulations, with the heading, "Retention of EB-1, EB-2 and EB-3 Immigrant Workers and program Improvements Affecting High-Skilled Nonimmigrant Workers," become effective on January 17, 2017.
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> According to the new regulations, is that I-140 petitions remain valid for the sponsored employee (beneficiary) to use in order to adjust status to lawful permanent resident. . . or apply for an immigrant visa . . . if the sponsoring employer goes out of business or withdraws the petition 180 days after USCIS approved the petition or 180 days after the employee submitted an adjustment application.

The Petitioner appears to be referring to the automatic revocation provisions at 8 C.F.R. § 205.1(a)(3)(iii)(C) and (D), which state that if a sponsoring employer withdraws an immigrant petition less than 180 days after its approval, or terminates its business 180 days or more after an associated adjustment of status application has been filed, the petition "remains approved" and the beneficiary may remain eligible for adjustment of status under section 204.5(j) of the Act and in accordance with 8 C.F.R. § 245.25.

Under section 204.5(j) of the Act, employment-based immigrant visa petitions "shall remain valid" for certain beneficiaries who obtain new job offers from the same or different employers. Under 8 C.F.R. § 245.25(a)(2)(ii)(B)(*2*), if a beneficiary's immigrant petition is pending when the beneficiary notifies USCIS of a new job offer on Form I-485 Supplement J, and such notification is made at least 180 days after the date the beneficiary filed an adjustment of status application, the pending petition will be approved if it was eligible for approval at the time of filing and until the beneficiary's adjustment of status has been pending for 180 days.

However, the record does not indicate that the Petitioner withdrew the petition or terminated its business after the Beneficiary's adjustment of status application had been pending for more than 180 days, nor does the record reflect that the Beneficiary notified USCIS of a new job offer on Form I-485 Supplement J. In addition, for the reasons discussed in our prior decisions, the record does not establish that the petition was eligible for approval at the time of filing and therefore it cannot "remain valid." The Petitioner does not explain how the referenced automatic revocation and portability provisions apply to the facts presented here. Further, the Petitioner does offer new facts that address our grounds for dismissing its prior combined motions to reopen and reconsider, or that demonstrate its eligibility for the requested classification.

Although the Petitioner has submitted a brief with new claims in support of its motion to reopen, it has not submitted new facts, supported by documentary evidence, and shown proper cause for reopening. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.