



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20451773

Date: AUG. 18, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Executive or Manager

The Petitioner, a management company, seeks to permanently employ the Beneficiary as its chief executive officer 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).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker (Form I-140), concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity. The Director further determined that both the Petitioner and the Beneficiary had willfully misrepresented material facts with respect to this petition. The Beneficiary filed a motion to reconsider, which the Director dismissed as untimely filed. On appeal, the Beneficiary asserts that the Director erroneously dismissed the motion.

Under 8 C.F.R. § 103.3(a)(1)(iii)(B) and (a)(2)(i), only an affected party may appeal an unfavorable decision. For purposes of appeals filed under 8 C.F.R. § 103.3 and motions filed under 8 C.F.R. § 103.5, the “affected party” means the person or entity with legal standing in the proceeding; it does not include the beneficiary of a visa petition.

The record reflects that this appeal was filed by [REDACTED] who is the Beneficiary of the Form I-140. As the Beneficiary is not an affected party in this proceeding, we must reject the appeal as improperly filed. 8 C.F.R. § 103.3(a)(2)(v).

Although the appeal must be rejected, we will briefly address the Director’s decision to dismiss the motion to reconsider. As a preliminary matter, although the Director dismissed the motion as untimely filed, the record reflects that the motion was also improperly filed by the Beneficiary and its dismissal was warranted for this additional reason. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A) provides that motions must be filed by the affected party or their attorney or representative. 8 C.F.R. § 103.5(a)(4) requires the dismissal of a motion that does not meet the applicable filing requirements.

With respect to the timeliness of the motion to reconsider, the Beneficiary’s counsel conceded at the time of filing the motion and concedes on appeal that the motion to reconsider was not filed within the

timeframe allowed by 8 C.F.R. § 103.5(a)(1)(i) or within the extended timeframe allowed by flexibilities implemented by U.S. Citizenship and Immigration Services during the COVID-19 pandemic.

Counsel maintains that the Director should have adjudicated the motion on its merits despite its late filing, citing 8 C.F.R. § 103.3(a)(2)(v)(B)(2). This regulation provides that if an untimely *appeal* meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion and the reviewing official must make a decision on the merits of the case. Counsel's assertion is not persuasive, as the previous filing was a motion to reconsider, not an appeal. There is no regulatory provision that requires USCIS to adjudicate an untimely filed motion to reconsider on its merits. Therefore, the Director properly dismissed the motion to reconsider, which was both untimely and not filed by the affected party.

ORDER: The appeal is rejected.