



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

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

In Re: 23092627

Date: DEC. 07, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Manager or Executive

The Petitioner is engaged in international trade and 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, concluding that the record did not establish that (1) the Petitioner would employ the Beneficiary in an executive capacity in the United States, and (2) that the Beneficiary was employed abroad in an executive capacity prior to his transfer to the United States as a nonimmigrant. The Petitioner subsequently filed a motion to reconsider, which the Director dismissed based on a determination that it did not meet the regulatory filing requirements. The matter is now before us on appeal.

In these proceedings, it is the petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Our review on appeal is generally limited to the basis for the immediately prior adverse decision. Accordingly, the sole issue before us is whether the Petitioner has established that the Director improperly dismissed its motion to reconsider.

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the previous decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits the reviewing official's authority to reopen or reconsider to instances where the affected party has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the

motion. USCIS cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The record reflects that the Petitioner timely filed a motion to reconsider on Form I-290B on June 10, 2021. The Petitioner's submission included the completed Form I-290B, the required filing fee, and a one-page cover letter indicating that other documents, including a brief in support of the motion, were enclosed. The record does not, however, include the referenced brief or enclosures, nor does it contain any other statement from the Petitioner identifying the basis for the motion to reconsider.

Accordingly, the Director dismissed the motion, concluding that the Petitioner did not state the reasons for reconsideration and establish that the denial of the petition was based on an incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3).

On appeal, the Petitioner submits a brief in which it contends that the Director's April 2021 decision denying the underlying immigrant petition was based on erroneous conclusions of fact and law. The Petitioner addresses the issues discussed in that decision, maintains that it met its burden to establish that the Beneficiary was employed abroad and will be employed in the United States in an executive capacity, and emphasizes that he is otherwise eligible for classification as a multinational executive under section 203(b)(1)(C) of the Act.

The Petitioner does not, however, address the Director's decision dated September 15, 2021, which is the decision before us on appeal. As such, the Petitioner has neither claimed nor demonstrated that the Director dismissed the motion to reconsider in error, based on the evidence in the record at the time of that decision. As noted above, the record supports the Director's determination that the Petitioner's motion to reconsider, which contained no brief or other statement from the Petitioner, did not meet the requirements at 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements must be dismissed under 8 C.F.R. § 103.5(a)(4).

The Director properly determined that the Petitioner's motion to reconsider did not meet the applicable requirements under 8 C.F.R. § 103.5(a)(3). Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.