



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

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

In Re: 20500121

Date: MAY 27, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an importer, exporter, and seller of cabinets, seeks to employ the Beneficiary as a manager under the first preference immigrant classification for multinational executives or managers. 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 petition, concluding the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner filed an appeal that we dismissed on the same basis. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will dismiss both motions as untimely.

The regulations require that a motion to reopen and a motion reconsider to be filed within 30 days of the decision that the motion seeks to reopen or reconsider, including three days for service by mail. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b). In contrast to the regulations related to the timely filing of a motion to reconsider, the regulations specific to a motion to reopen indicate that untimeliness may be excused “where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” 8 C.F.R. § 103.5(a)(1)(i). The date of filing is not the date of mailing, but the date when U.S. Citizenship and Immigration Services (USCIS) receives the intended motion: (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion, instructions; and (2) at the location that those instructions designate for filing motions.¹

We acknowledge that USCIS has granted flexibility with respect to the filing of motions due to the coronavirus pandemic. Consistent with USCIS guidance, we accept Forms I-290B filed up to 60 calendar days from the date of decisions issued anytime between March 1, 2020, and September 30, 2021. *See* USCIS Extends Flexibility for Responding to Agency Requests, <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-5> (last visited May 27, 2022).²

¹ *See* 8 C.F.R. §§ 103.2(a)(1) (“every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions” and with whatever fees are required by regulation); 103.2(a)(6) (form instructions specify filing location).

² Our prior appeal decision was issued on July 1, 2021.

The Petitioner contends on motion that it filed timely motions, pointing to a Form I-290B rejection notice issued by USCIS on July 31, 2021, which reflected that a Form I-290B was received by USCIS on July 30, 2021. The rejection notice stated the Form I-290 was rejected because it was not signed in the proper location and filed using an outdated version of the form. The notice instructed the Petitioner to resubmit a current version of the Form I-290B and correct these errors. The record reflects that the Petitioner later filed another proper Form I-290B, or motion to reopen and a motion to reconsider, with USCIS on October 15, 2021, 106 days after the issuance of our prior appeal decision on July 1, 2021. The Petitioner asserts on motion that the initial Form I-290B was timely and not filed on an outdated form.³ The Petitioner indicates that its delay in resubmitting the motions on the proper version of the Form I-290B was “due to personal reasons.”

Upon review, we will dismiss the motions as untimely. The record reflects that the Petitioner likely submitted an outdated Form I-290B on July 30, 2021, as the documentation on motion reflects an older signed version of that form, namely the version that expired on May 31, 2020. As such, it appears that the Director correctly rejected the initially filed Form I-290B and sent notice of this rejection a day later. The rejection notice properly instructed the Petitioner to submit another Form I-290B using the current version. However, the Petitioner did not submit a new, correct, Form I-290B for another 76 days, or a total of 106 days after the date our appeal decision was issued on July 1, 2021.

Therefore, even if the Director had improperly rejected the initial Form I-290B, which the record does not indicate, the Petitioner at the time of USCIS’ rejection notice had another 33 days to file a corrected form, considering the extended period to file the form pursuant to flexibilities granted due to the coronavirus pandemic. However, as noted, the Petitioner submitted a current version of the Form I-290B 76 days after USCIS’ rejection notice, or 106 days after the date our appeal decision was issued. As such, the record reflects that the motion to reopen was untimely, and the regulations provide no exception to the requirement to file this motion in a timely fashion.

Further, the motion to reconsider was also untimely, and the Petitioner does not provide sufficient evidence to demonstrate that the delay in filing this motion was beyond its reasonable control, but only vaguely states that this was due to “personal reasons.” Therefore, it must also be dismissed as untimely.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

³ On motion, the Petitioner refers to the Form I-140, Immigrant Petition for an Alien Worker, filed by the Petitioner on March 29, 2018, when discussing timeliness. However, since discussing the timeliness of this form is not relevant, we reasonably presume the Petitioner is referring to the Form I-290B when discussing the issue of timeliness on motion.