



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

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

In Re: 24993143

Date: FEB. 03, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a computer software development and consulting company, seeks to permanently employ the Beneficiary as a “Manager – Infrastructure Operations Specialist” 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 the Beneficiary had been employed abroad, or would be employed in the United States, in a managerial or executive capacity. The Director further determined that the record contained willful misrepresentations of material fact with respect to the nature of the Beneficiary’s employment within the organization. The Petitioner subsequently filed a combined motion to reopen and reconsider. The Director reopened the matter, and, following issuance of a notice of intent to deny, issued a new decision denying the petition on the same grounds. The Petitioner then filed a motion to reopen, which the Director also dismissed. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *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 immediate prior decision. Accordingly, the sole issue before us is whether the Petitioner has established that the Director improperly dismissed its motion to reopen.

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The Director dismissed the Petitioner's motion to reopen after determining that it did not meet these regulatory requirements. Specifically, the Director concluded that the Petitioner's motion did not state new facts and was not supported by affidavits or other documentary evidence.

On appeal, the Petitioner submits a brief in which it primarily addresses the grounds for denial of the underlying petition. However, as noted above, the Petitioner did not appeal the denial order itself, but rather the Director's latest unfavorable decision (dated July 6, 2022), in which the Director concluded that the Petitioner's motion to reopen did not meet applicable requirements. The merits of the denial decision, and of the underlying petition, are not before us.

The Petitioner's appellate brief mentions the Director's dismissal of its motion to reopen only in passing. It does not acknowledge, much less contest, the stated basis for dismissal of that motion.

Further, the record supports the Director's decision to dismiss the motion to reopen. The brief that accompanied the motion requested that the matter be reopened so that the Director could "consider additional evidence" and referred to "accompanying evidence." However, the record reflects that the motion to reopen consisted solely of the Form I-290B, Notice of Appeal or Motion, a copy of the Director's unfavorable decision dated March 16, 2022, and a brief; the motion was not supported by affidavits or other documentary evidence. In addition, the brief repeated statements made in the Petitioner's previous submissions and did not provide new facts for consideration on motion.

As such, the Director correctly concluded that the Petitioner did not meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements must be dismissed under 8 C.F.R. § 103.5(a)(4).

For the reasons discussed, we conclude that the Petitioner has neither claimed nor demonstrated that the Director dismissed the motion to reopen in error. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.