



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

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

In Re: 23091934

Date: NOV. 16, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers for Advance Degree Professional

The Petitioner, an IT services provider, seeks to employ the Beneficiary as a senior software engineer under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

In August 2021, the Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner did not establish its ability to pay the Beneficiary the offered wage. In September 2021, the Petitioner filed a motion to reopen and reconsider that decision, which the Director subsequently dismissed in that same month. The matter is now before us on an appeal the Petitioner filed in October 2021.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

As the initial matter, we note that our review on appeal is generally limited to the bases within the underlying adverse decision. Here, accompanying the appeal the Petitioner included a copy of the Director's decision dismissing their motions. Because the Petitioner filed the appeal after the Director issued the decision on the motions, an appeal is normally applied to the most recent decision from the lower adjudicative body, the Petitioner only included a copy of the motion decision with this filing, and they listed the motion's receipt number on the appellate form, we consider this to be an appeal on the motion dismissal. And we will consider whether the Petitioner has demonstrated that the Director improperly dismissed the motion to reopen and reconsider.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that an appeal shall be summarily dismissed if the concerned party does not specifically identify any erroneous conclusion of law or statement of fact for the appeal. The Director dismissed the motions finding the Petitioner did not adequately demonstrate the filing met the requirements of a motion to reopen or a motion to reconsider. On appeal, the Petitioner does not address those bases, and instead of addressing the Director's findings within the

motion decision, their appellate arguments are oriented towards the Director's petition denial that predated the motion decision. As such, the Petitioner has not provided a proper basis for this appeal.

Further, because the most recent decision was related to the motions and not to the petition filing, when the Petitioner did not contest any issue within the Director's motion decision, it abandoned its claims relating to the issues in the motion dismissal. *E.g.*, *Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that issues not appealed are deemed as abandoned); *see also United States v. Fernandez Sanchez*, 46 F.4th 211, 219 (4th Cir. 2022) (finding the failure to raise arguments regarding eligibility waives those arguments on appeal).

Even if it was permissible for the Petitioner's arguments on appeal to be oriented towards the Director's initial denial of the petition, they do not identify any specific error in law or fact attributable to the Director's decision. The appellate brief simply offers a timeline of the events that occurred before the Director, and they include a discussion related to the Beneficiary's H-1B petition that relies on this petition filing as she is on her sixth year of her H-1B status.

Here, the Petitioner does not contest the Director's specific findings contained within the decision on their motions or on the original petition denial and offers no substantive basis for filing the appeal. As such, we must summarily dismiss the appeal.

**ORDER:** The appeal is summarily dismissed under 8 C.F.R. § 103.3(a)(1)(v).