



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

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

In Re: 22672086

Date: OCT. 31, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner, a landscaping business, seeks to permanently employ the Beneficiary as a landscape crew leader. It requests classification of the Beneficiary as an “other” worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(B)(3)(A)(iii). This employment-based “EB-3” immigrant classification allows a U.S. employer to sponsor for lawful permanent residence a noncitizen who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Other Worker (Form I-140), observing that the U.S. Department of Labor (DOL) determined that the Petitioner had engaged in certain actions rendering it subject to mandatory debarment under sections 212(n)(2)(C)(i) and/or (ii) of the Act. The Director concluded that, based on this debarment, none of the Petitioner’s immigrant visa petitions could be approved for a period of 10 years and denied the instant petition during the referenced 10-year period. The Petitioner filed a motion to reconsider, which the Director dismissed. The matter is now before us on appeal.

In this proceeding, the petitioner bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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 withdraw the Director’s decision and remand the matter to the Director for the issuance of a new decision.

I. ANALYSIS

As a preliminary matter, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director’s subsequent finding that its motion did not meet the requirements of a motion to reconsider. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us on appeal is whether the Director properly dismissed the Petitioner’s motion to reconsider.

A motion to reconsider must explain the reasons for reconsideration and establish that the adverse decision (1) was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and (2) was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner's brief in support of the motion to reconsider alleged specific errors in the Director's decision and asserted that the denial was based on a "plainly incorrect application of the law." The Petitioner contested the Director's determination that it had been subject to a 10-year debarment under section 212(n)(2)(C)(i) or (ii) of the Act, emphasizing that both sections of the cited statute are predicated on the Secretary of Labor determining, after notice and hearing, that an employer has violated an H-1B program requirement. The Petitioner maintained that it has never participated in the H-1B program and therefore could not have committed violations resulting in debarment under the cited statutory provisions. The Petitioner also emphasized that the Director was unable to identify which provision of section 212(n)(2)(C) of the Act it had allegedly violated and was therefore lacking specificity regarding the reason for denial.

The Director did not address these specific arguments, and instead observed that the Petitioner had deemed the denial decision to be "vague." The Director then summarily concluded that "the evidence submitted with the motion does not establish that the requirements for filing this motion have been met" without any analysis of the evidence considered. Therefore, we agree with the Petitioner's appellate arguments that the Director's decision dismissing the motion to reconsider was insufficient. An officer must fully explain the reasons for denial in order to allow the petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, the Director's decision is withdrawn, and the matter will be remanded to the Director.

We also acknowledge the Petitioner's request that we address the arguments it made on motion and withdraw the Director's decision denying the underlying Form I-140. As noted, the denial of the Form I-140 is not before us on appeal. Further, because the Director has not yet addressed the merits of the Petitioner's motion to reconsider, the record of proceeding is not ripe for us to consider the Petitioner's arguments in that motion. The matter is being remanded so that the Director may make the initial determination regarding the sufficiency of the claims and legal arguments made in support of the motion.

II. CONCLUSION

As the Director's decision did not address the merits of the Petitioner's properly filed motion to reconsider, we will remand the matter for entry of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.