



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

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

In Re: 21180208

Date: MAY 17, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Vermont Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that the proffered position qualified as a specialty occupation. The Applicant subsequently filed a combined motion to reopen and reconsider, but the Director dismissed the motions. The matter is now before us on appeal. 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. As a result, we 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 those issues. *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 Mungongo v. Gonzales*, 479 F.3d 531,

534–35 (7th Cir. 2007) (concluding that where a filing party fails to address the issues within the underlying decision, they have effectively waived those issues on appeal).

Here, the Petitioner does not contest the Director’s specific findings contained within the decision on their motions, 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).