



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

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

In Re: 27437289

Date: JUL. 03, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to temporarily 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 nonimmigrant 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 Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish that the proffered position qualifies as a specialty occupation. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

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). Upon review, we will dismiss the motion.

The regulations require a motion to reconsider be filed within 30 days of the decision the motion seeks to reconsider, plus three days for service by mail. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date USCIS received 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. *See* 8 C.F.R. §§ 103.2(a)(1) and 103.2(a)(6).

We dismissed the Petitioner's appeal on October 24, 2018. The Petitioner was afforded 30 days plus three days for service by mail, until November 26, 2018, to file a motion to reopen and/or reconsider our decision. USCIS did not receive the completed and signed Form I-290B with the required fee at the designated USCIS location until November 27, 2018. The record therefore reflects the Petitioner did not timely file the motion. And the regulations provide no exception to the requirement to file a motion to reconsider in a timely fashion. So we must dismiss the motion as untimely.

ORDER: The motion to reconsider is dismissed.