



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

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

In Re: 20924197

Date: MAR. 25, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a consultancy services company and reseller of network security products, seeks to continue the Beneficiary's temporary employment as director of operations under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed abroad in a capacity that was managerial, executive, or involved specialized knowledge, and that the Beneficiary will be employed in the United States in a managerial or executive capacity.

The Petitioner appealed the denial of the extension petition, and we dismissed that appeal in February 2021, in a nine-page decision that addressed the merits of the petition and the Petitioner's assertions on appeal. The cover page for that appellate decision advised the Petitioner of its right to file a motion to reopen or reconsider, within a specified time period, under the regulations at 8 C.F.R. § 103.5.

In April 2021, the Petitioner filed an appeal to our February 2021 appellate decision. We rejected that appeal in August 2021, because no provision exists to permit an appeal of an appellate decision. In that decision, we noted that the proper way to contest the dismissal of an appeal is via a motion, but the cover page to the rejection notice did not contain any reference to motion rights.¹

The matter is now before us on a motion to reopen. We will dismiss the motion.

¹ Furthermore, a motion to reopen must include new facts and supporting evidence. 8 C.F.R. § 103.5(a)(2). As we noted in our August 2021 rejection notice, the Petitioner's April 2021 filing did not include any brief or evidence. As such, that filing would not have met the requirements of a motion to reopen, even if the Petitioner had labeled that filing as a motion rather than an appeal. We note that the regulations make no provision to permit a petitioner to submit additional evidence to supplement a previously-filed motion.

A petitioner's motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion does not seek to contest the rejection of the second appeal. Rather, on the Form I-290B, Notice of Appeal or Motion, the Petitioner specifies the "Date of the Adverse Decision" as "02/10/2021." In the accompanying brief, the Petitioner states: "This motion to reopen is written in response to the dismissal of an appeal . . . dated February 10, 2021." Therefore, the Petitioner seeks review of our February 2021 dismissal of the Petitioner's original appeal. The motion was filed in September 2021, well outside the permitted period, even taking into account filing flexibilities in place at the time of our appellate decision.²

We may excuse untimely filings, in our discretion, if the petitioner demonstrates that the delay was reasonable and was beyond the petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i). Here, the Petitioner's delay in filing the motion was neither reasonable nor beyond the Petitioner's control. Our February 2021 dismissal notice duly advised the Petitioner of its right to file a motion, and the deadline for doing so. We did not indicate that our appellate decision was appealable, and the Petitioner's attempt to pursue an appeal anyway did not pause or reset the limited period for filing a timely motion.

Because the motion was untimely filed, with no showing that the delay was reasonable or beyond the Petitioner's control, we must dismiss the motion as required by 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

² Those flexibilities allowed affected parties 60 days after the issuance of an adverse decision to file appeals or motions. *See* <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-3>.