



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

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

In Re: 20579534

Date: MAY 18, 2022

Appeal of California Service Center Decision

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

The Petitioner, a wholesaler and retailer of candles and related products, seeks to continue the Beneficiary's temporary employment as its "CEO" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity.<sup>1</sup> See Immigration and Nationality Act (the 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.

On May 20, 2021, the Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary's proposed position in the United States would be in a managerial or executive capacity. On June 24, 2021, the Petitioner filed a combined motion to reopen and reconsider,<sup>2</sup> putting forth the claim of ineffective assistance of counsel. The Director denied the motion on August 31, 2021, finding that the Petitioner did not adequately support its ineffective assistance of counsel claim with evidence, such as proof of retainer of the attorney's services, evidence that a complaint was filed with a state bar against the attorney, or notice of such complaint to the attorney in question. On September 27, 2021, the Petitioner filed another combined motion to reopen and reconsider,<sup>3</sup> which was supported by a legal brief and additional evidence. The Director denied that motion on August 31, 2021, concluding that it was untimely filed and that it was not accompanied by evidence showing that it merits a favorable exercise of discretion for which the untimeliness may be excused. The Director mentioned only the date of the May 2021 denial decision, explaining that a motion filed in September 2021 was not submitted within 33 days of the May 2021 decision. The matter is now before us on appeal.

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<sup>1</sup> The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period from August 1, 2019, until July 31, 2020. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

<sup>2</sup> Receipt number [redacted]

<sup>3</sup> Receipt number [redacted]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for further consideration and entry of a new decision.

To properly file a motion to reopen or reconsider, the affected party must file the motion within 33 calendar days of the decision the motion seeks to reconsider or reopen.<sup>4</sup> 8 C.F.R. § 103.5(a)(1). However, because of the COVID-19 pandemic, USCIS may consider a Form I-290B filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and July 25, 2021.

On appeal, the Petitioner reiterates the procedural history leading up to this appeal, which includes two motions. The first motion was filed in June 2021 following the May 2021 denial decision; a second motion was filed in September 2021 following the August 2021 decision denying the June 2021 motion. The Director did not mention either the June 2021 motion or the subsequent August 2021 denial decision, which resulted in the motion that was subsequently filed in September 2021. As such, the Director incorrectly determined that the latter motion was filed with respect to the original May 2021 denial, rather than in relation to the motion denial issued in August 2021. This omission led to the erroneous conclusion that the latter motion was untimely filed. The procedural history described above shows that only 27 days had passed between the Petitioner's September 2021 motion and the August 2021 denial decision that the September motion sought to have reconsidered and reopened. Accordingly, the motion was filed within the applicable filing deadline, and the Director's determination that the motion was untimely is incorrect. It therefore follows that the merits of the Petitioner's September 2021 motion warranted full consideration.

Accordingly, we shall remand the matter.

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

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<sup>4</sup> With regard to the motion to reopen, an untimely filing may be excused in the discretion of U.S. Citizenship and Immigration Service where it is demonstrated that the delay was reasonable and beyond the petitioner's control.