



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

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

In Re: 23193939

Date: OCT. 28, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an e-commerce and frame store business, seeks to temporarily employ the Beneficiary as its chief financial officer under the L-1A nonimmigrant classification for intracompany transferees. 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.

The Director of the Vermont Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner appealed that decision, asserting that the Beneficiary's U.S. employment would be in an executive capacity. We dismissed the appeal, affirming the Director's determination that the record did not establish that the Beneficiary would be employed in an executive capacity. The Petitioner has filed, and we have dismissed, five subsequent motions. The matter is now before us on a motion to reconsider.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) establish that the previous decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). In this case, the prior decision is our decision dated May 12, 2022, in which we dismissed the Petitioner's previous motion to reconsider. The issue before us is whether the Petitioner has established with the current motion that our prior decision was based on an

incorrect application of law or USCIS policy. Therefore, although the Petitioner also requests that we review the underlying basis for denial of its petition and dismissal of its appeal, they are not properly before us on motion because we did not reach them in prior decision.

A. Procedural History

We dismissed the Petitioner's appeal of the Director's decision on October 10, 2018, and the Petitioner has previously filed four motions to reconsider and one motion to reopen, which we also dismissed.

The Petitioner's third motion was untimely filed, and we dismissed it on that basis, citing the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I).¹ The Petitioner's fourth motion, a motion to reconsider our dismissal of the late third motion, was also dismissed. In that decision, citing the regulation at 8 C.F.R. § 103.5(a)(1), we noted that USCIS may excuse the untimely filing of a motion to reopen if the petitioner demonstrates that the delay was reasonable and beyond its control. In this case, however, the Petitioner had not demonstrated, or even asserted, that the untimely filing of its motion to reopen in January 2020 was reasonable or beyond its control.

In its fifth motion, the Petitioner stated that it believed the 33-day filing period applicable to motions would be measured in business days rather than calendar days, and therefore the untimely filing of its third motion should be excused. We acknowledged this explanation but dismissed the motion to reconsider, concluding that the Petitioner did not meet its burden to establish that the late filing of its motion to reopen was reasonable or beyond its control.² Further, we determined that the Petitioner's motion to reconsider did not establish how we misapplied law or USCIS policy by dismissing the fourth motion, which lacked any explanation for the untimely filing of the motion to reopen.

B. Motion to Reconsider

As noted, this matter is now before us again on a motion to reconsider. In the brief submitted in support of the motion, the Petitioner does not contend that our decision to dismiss its fifth motion was based on an incorrect application of law or USCIS policy, as required under 8 C.F.R. § 103.5(a)(3). In fact, the Petitioner concedes that the late filing of the previous motion was "a mistake on our part." The Petitioner requests a "one time relaxation" of the regulatory requirements applicable to motions and asks that we reconsider its contention that the Beneficiary would be employed in an executive capacity in the United States. In this regard, it repeats assertions made in its first and second motions to reconsider, and we which have already addressed in dismissing those motions.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly

¹ We dismissed the Petitioner's second motion to reconsider on December 11, 2019, and the Petitioner filed its third motion on January 17, 2020. Thus, it did not meet the 33-day filing deadline prescribed in 8 C.F.R. §§ 103.5(a)(1) and 103.8(b).

² The pertinent regulations do not state whether the 33-day filing period refers to calendar days or business days, but the term "day" normally means any calendar day and does not exclude weekend days or holidays. We concluded that, absent specific language in the regulations stating that "days" referred only to business days and not to Saturdays, Sundays, and holidays, it was not reasonable for the Petitioner to assume that the filing period was measured in business days rather than calendar days.

completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

Here, the Petitioner's motion, which does not allege any misapplication of law or USCIS policy in our prior decision, does not meet the requirements for a motion to reconsider stated at 8 C.F.R. § 103.5(a)(3). Accordingly, the motion must be dismissed.

ORDER: The motion to reconsider is dismissed.