



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

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

In Re: 29321360

Date: DEC. 21, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner operates a grocery store and seeks to temporarily employ the Beneficiary as general manager and chief executive officer of its claimed new office under the L-1A nonimmigrant classification for intracompany transferees.¹ 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 in July 2019.² We dismissed the Petitioner's appeal as well as its four subsequent motions, the first of which was a motion to reconsider followed by three combined motions to reopen and reconsider. We dismissed the most recent motion, concluding that the Petitioner did not meet motion to reopen requirements because it provided no new facts to establish that we erred in dismissing the prior motion; we also dismissed the prior motion to reconsider, concluding that the Petitioner did not identify any error of law or policy or establish that our previous decision was incorrect when it was issued in January 2023. The matter is now before us again on another combined motion to reopen and reconsider, the Petitioner's fifth motion.³

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.

¹ A petitioner seeking treatment as a new office must establish that it is an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

² The record reflects that the Petitioner's former affiliate, [REDACTED], which was owned by the same foreign parent company as the Petitioner, filed a new office petition on the Beneficiary's behalf; that petition was approved and valid from November 16, 2016, until October 31, 2017. The affiliate's subsequent petition to continue the Beneficiary's employment was denied by the Director of the California Service Center and we dismissed its appeal of that decision on August 9, 2018. The Petitioner in this matter was incorporated one week later, on August 15, 2018. In the decision denying that petition, the Director questioned the Petitioner's eligibility to file a "new office" petition, noting that an affiliate of the Petitioner, which operated the same retail establishment at the same location and no longer exists, had previously employed the Beneficiary under another L-1A new office petition. The petition was denied based on the conclusion that the Petitioner had not established that it would employ the Beneficiary in a managerial or executive capacity within one year of the petition's approval.

³ In a separate filing (with receipt number IOE0921326925), the Petitioner filed an identical motion to reopen and reconsider and offered the same supporting evidence.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to *our latest decision* dismissing the motion to reopen. Likewise, we will only consider legal arguments that pertain to our latest decision dismissing the motion to reconsider. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We further note that an affected party may file a motion to reopen or reconsider our dismissal of their motion. Under our current regulations, there is no limit on the number of motions that an affected party may file in a proceeding. However, a motion is not an opportunity to restate previously considered and rejected arguments. Nor will rearguing the facts and issues raised on appeal present a proper basis for a motion to reconsider. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”).⁴

Here, the Petitioner provides a statement from its vice president, who reiterates that claim that he attended company meetings regarding plans to franchise and the claim that the Petitioner qualifies as a new office because it has a new federal tax identification number. Thus, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Accordingly, there is no basis for reopening of our prior decision.

Further, regarding the current motion to reconsider, the Petitioner again argues facts and issues that we considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”). Namely, the Petitioner argues that it qualifies as a new office and that our prior decision to the contrary was incorrect. Because the Petitioner has not established that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision, the Petitioner has not met the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Accordingly, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

⁴ *See also Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) (“Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion.”).