



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

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

In Re: 24935563

Date: JAN. 27, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, which operates a grocery store, seeks to temporarily employ the Beneficiary as general manager and chief executive officer of its new office 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 in July 2019, concluding that the Petitioner had not met its burden of proof to establish eligibility, and that the Petitioner's grocery store does not qualify as a new office. We dismissed the Petitioner's appeal from that decision in July 2021. The Petitioner filed a motion to reconsider, which we dismissed in January 2022, and a combined motion to reopen and reconsider, which we dismissed in August 2022. The matter is now before us on another combined motion to reopen and 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 de novo review, we will dismiss the combined motion.

We incorporate by reference the "Legal Framework" section of our July 2021 decision, which describes the requirements for a new office L-1A petition. *See generally* 8 C.F.R. § 214.2(l)(3)(v). Specifically, the term "new office" refers to 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). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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.

A discussion of the chronology of this case will provide context for the motion now before us. The Petitioner's foreign parent company established a U.S. subsidiary that opened a grocery store in [redacted] California in 2016. That subsidiary filed an L-1A new office petition on the Beneficiary's behalf in November 2016. The Director approved the 2016 petition, but denied a petition to extend the Beneficiary's status. We dismissed the appeal from that denial in August 2018. The entity that filed the 2016 petition no longer exists.

Days after we dismissed the appeal, the present Petitioner, a subsidiary of the same foreign parent company, filed its articles of incorporation, and subsequently took over operations of the same grocery store, with many of the same employees including the Beneficiary.¹ The Petitioner filed an L-1A new office petition on the Beneficiary's behalf in October 2018. The October 2018 petition underlies the present proceeding.

The Director denied the petition in January 2019, citing inconsistencies in the Petitioner's evidence. The Petitioner appealed, asserting that the "claimed 'inconsistencies' can easily be justified and explained," and that the Director had disregarded significant evidence in the record.

We dismissed the appeal in July 2021, concluding that the Petitioning entity did not qualify as a "new office" when it filed the petition in October 2018, because it was essentially continuing an existing business. We concluded that reorganization of essentially the same business does not justify the approval of multiple L-1A new office petitions on behalf of the same beneficiary in what amounts to the same position.

In a motion to reconsider our July 2021 decision, counsel for the Petitioner stated: "The new company established in 2018 has a different business model and purpose," including "the intent to franchise the business." We dismissed the motion in January 2022, stating:

[C]ounsel's claim that the Petitioner has a different business model and purpose than its former affiliate is not supported by the business plans or by the previously submitted letters from the Petitioner and its foreign parent company, which do not mention any franchise plans. In contrast, there is ample evidence that the Petitioner was established for the purpose of continuing to operate a [redacted] California grocery store . . . after [the previous] entity's attempt to extend the Beneficiary's L-1A status was unsuccessful.

The Petitioner filed its second motion, a combined motion to reopen and reconsider. The Petitioner submitted a February 2022 letter from the "leader of a prestigious [unidentified] non-profit organization for successful overseas Chinese business people," who stated, without corroboration, that he and the Petitioner discussed franchise plans in August 2018.

In our August 2022 decision, we dismissed the motion to reopen because the Petitioner had not submitted any evidence to substantiate the claim, several years after the fact, that the Petitioner had

¹ We stated in our July 2021 decision: "It is also noteworthy that 8 C.F.R. § 214.2(l)(3)(v) related to new office petitions refers to a 'new office' and a 'new operation,' rather than a new petitioner or legal entity."

discussed franchise plans in 2018. We dismissed the motion to reconsider because the Petitioner had not established error in our prior decision. We also stated:

[T]he record does not show that Petitioner plans to start a new operation or follow a new hiring plan that is consistent with that operation; instead, the record indicates that the Petitioner will continue its affiliate predecessor's operation with the assistance of staff that were already in place to accommodate that existing operation. Given these specific circumstances, we were correct in our conclusion that the parent company had exhausted its opportunity to launch the same operation under the "new office" regulations.

Because the Petitioner shifted its claim from simply continuing an existing operation to seeking to develop a franchise, we also cited binding precedent, indicating that a petitioner may not make material changes to a petition after it has been filed in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In its latest motion, the Petitioner submits a "business proposal" to support its claim that the company had planned a franchise in 2018. The business plan, however, is dated September 2022. The cover page of the proposal indicates that it is updated from a July 2018 proposal, but this after-the-fact annotation does not establish that the franchise plan existed when the Petitioner filed the petition in 2018. A petitioner must meet all eligibility requirements at the time of filing. 8 C.F.R. § 103.2(b)(1). The new proposal discusses "a brand-new store" in [redacted] California, to be followed by "franchise stores . . . in the greater [redacted] Area and the [redacted]"

The new facts asserted in the latest motion do not show that the petition was approvable when it was filed, and the Petitioner has not shown proper cause to reopen the petition. Also, the Petitioner's latest motion does not identify any error of law or policy or establish that our previous decision was incorrect when we issued it in August 2022.

The Petitioner's motion does not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2) or a motion to reconsider at 8 C.F.R. § 103.5(a)(3), and therefore must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.