

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 30 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition on April 30, 2013, and dismissed a subsequent motion to reconsider on July 29, 2014. The matter is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner indicated that it was established in [REDACTED] and claims to operate as a restaurant. According to Part 6, Item 1 of the Form I-140, the petitioner seeks to employ the beneficiary as its managing director. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner submitted falsified documents in support of the petition. In addition, the director found the petitioner to be statutorily ineligible based on its failure to establish the following: (1) a qualifying relationship exists between the petitioner and the beneficiary's foreign employer abroad; (2) the foreign entity continues to do business; (3) the beneficiary was employed abroad in a qualifying managerial or executive capacity; (4) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and (5) the petitioner had the ability to pay the beneficiary's proffered wage commencing on the date the petition was filed. The director ultimately denied the petition with an additional finding of fraud.

The petitioner subsequently filed a motion to reconsider, which the director dismissed in a decision dated July 29, 2014. Although the director dismissed the motion based on the finding that the motion was untimely filed, he noted that, even if the motion had been timely, it would nevertheless of have been dismissed based on the finding that the petitioner's submissions did not warrant reconsideration of the original decision. The matter is now before our office on appeal.

It is noted that the director stated: "If you disagree with *this* decision, you may appeal to the Administrative Appeals Office (AAO)" (Emphasis added). As this language indicates, an appeal is filed in response to a director's unfavorable action. In this matter, given that the unfavorable decision is with regard to the petitioner's motion, the scope of the appeal is limited to the director's decision on that motion. We see, for instance, that the regulatory provision at 8 C.F.R. § 103.3(a)(2)(i) states: "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions *within 30 days after service of the decision.*" (Emphasis added). Thus, if the petitioner wished to appeal the director's decision to deny the petition, it should have elected to file that appeal within 30 days of the director's denial decision. However, in the present matter, the petitioner elected to file a motion instead of an appeal and, thereby, limited the scope of the current appeal to the merits of the director's decision to dismiss that motion.

On July 29, 2014, the director dismissed the petitioner's motion. Although the director was correct in dismissing the motion, we find that the director erred in finding that the petitioner's June 3, 2013

filing of the motion to reconsider was untimely.¹ Notwithstanding the director's error, we find that the decision to dismiss the motion was correct based on a proper application of the requirements of a motion to reconsider. As the petitioner did not establish that the director's original decision to deny the petition warranted reconsideration, the motion was properly dismissed.

The record of proceeding that is currently before us contains: (1) the Form I-140 and supporting documentation; (2) the director's requests for additional evidence (RFE) and notice of intent to deny (NOID); (3) the petitioner's responses to each of the notices; (4) the director's April 30, 2013 denial letter; (5) the petitioner's first Form I-290B appeal, filed September 11, 2012² and an additional Form I-290B with the petitioner's Motion to Reconsider and supporting documents, filed on June 3, 2013;³ (6) the director's decision, dated July 29, 2014, dismissing the motion and affirming the original decision; and (7) the petitioner's appeal, consisting of the Form I-290B and supporting documents addressing the merits of the director's original decision denying the petition.

II. LAW AND ANALYSIS

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), *Processing motions in proceedings before the Service*, "[a] motion that does not meet applicable requirements shall be dismissed."

¹ Given that the Form I-290B receipt date fell on a Monday, it must be deemed as timely filed, despite the fact that USCIS did not receive the appeal until the thirty fourth day after the date the denial was issued.

² The record shows that the petitioner originally filed a Form I-290B seeking to appeal the director's NOID, dated August 1, 2012. Upon reviewing the matter, we rejected the appeal as improperly filed, pointing out that the regulation at 8 C.F.R. § 103.3(a)(1)(ii) allows the filing of an appeal only in an instance where an unfavorable decision on a petition has been issued. As the director did not issue an unfavorable decision until April 30, 2013, there was nothing to appeal on September 11, 2012 when the petitioner filed an appeal.

³ The record shows that the petitioner initially filed a motion to reconsider on May 30, 2013. However, a note on the Form I-290B indicates that the filing was rejected due to a bounced check. The petitioner subsequently refiled the motion, which USCIS received on June 3, 2013.

B. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(1)(i)(3), *Requirements for motion to reconsider*, states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare id.* and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. *See 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."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); *see also Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

C. Discussion and Analysis

As indicated above, the director's initial decision to deny the petition was based upon the director's finding of fraud and the conclusion that the petitioner did not meet the eligibility criteria based on five individual grounds. However, as the petitioner elected not to appeal the original denial, the matter that is now before us on appeal is the director's later decision dismissing the petitioner's motion to reconsider. In other words, the issue currently before us is whether the director was correct in issuing the July 29, 2014 decision dismissing the motion to reconsider. As will be discussed below, we find that the director's decision to dismiss the motion was correct.

As a preliminary matter, it is worthwhile to note that a motion to reconsider is not a vehicle for introducing evidence on the merits of the petition that was not before the director at the time of his or her decision to deny the petition. As quoted above, "A motion to reconsider a decision on an application or petition must . . . establish that the decision was incorrect based on the evidence of record at the time of the initial decision." We find that the petitioner's submissions did not meet the requirements of a motion to reconsider.

On appeal, the petitioner contends that the director made numerous errors in his factual findings, including his findings concerning the beneficiary's entry and exit dates into and out of the United States, the sworn statements the beneficiary made at a U.S. embassy in India, and suspension of the petitioner's attorney's credentials. The petitioner states that "[t]here has been no intention to commit fraud" and maintains that all information pertaining to the beneficiary is accurate. The petitioner then proceeds to address the director's findings of ineligibility, offering information to overcome those findings.

On motion the petitioner was required to specifically and sufficiently articulate why the director's decision denying the petition was based on an incorrect application of law or USCIS policy. However, the petitioner did not specify or articulate why the director's original decision was incorrect; nor did the petitioner cite any relevant statute, regulation or relevant precedent decision that would support a contention that the director's decision to deny the petition was based upon a misapplication of statute, regulation, or USCIS policy to the evidence of record before the director at the time of the decision to deny the petition.

On appeal, the petitioner is wholly focused on addressing the grounds for the July 29, 2014 denial of the petition, which is not the subject of the instant filing and is not now before us. The only issue correctly before us on appeal is whether the director was correct to dismiss the motion to reconsider in his immediate prior decision. However, the petitioner did not address that issue.

As the appeal does not establish that the director's decision to dismiss the motion to reconsider was incorrect, the appeal will be dismissed, and the petition will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. § 103.5(a)(3) (requirements for a motion to reconsider) and the instructions for motions to reconsider at Part 3 of the Form I-290B.

We find that the director did not err in dismissing the motion to reconsider, as the documents constituting that motion to reconsider did not articulate how the director's decision to deny the petition misapplied any particular pertinent statutes, regulations, policies or precedent decisions to the evidence of record that was before the director when the director rendered the decision to deny the petition.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.