



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

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

MATTER OF M-I-G-

DATE: DEC. 23, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a gymnastics school, seeks to continue to employ the Beneficiary as an “Upper Level Gymnastics Coach” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Acting Director, Vermont Service Center, denied the petition.¹ We dismissed the appeal and denied a subsequent motion. The matter is again before us on a motion to reconsider. The motion will be denied.

I. PROCEDURAL HISTORY

The Director reviewed the evidence pertinent to the I-129 decision, determined that the Petitioner had not established eligibility for the benefit sought, and denied the visa petition. Specifically, the Director found that the Petitioner did not establish that the Beneficiary is eligible for an extension of stay beyond six years pursuant to either section 104(c) and section 106(a) of the “American Competitiveness in the Twenty-First Century Act of 2000” (AC21) as amended by the “Twenty-First Century Department of Justice Appropriations Authorization Act” (DOJ21).

The Petitioner appealed. On appeal, we determined that the evidence of record did not provide a basis for extending the Beneficiary’s stay in H-1B classification beyond the six years to which section 214(g)(4) of the Act limits admission in H-1B status. Our decision also included a finding that extended beyond the Director’s decision, namely, that the extension petition must also be denied because it had not been filed within the validity period of the petition that it sought to extend, as required by the regulation at 8 C.F.R. § 214.2(h)(14). We determined that the prior H-1B petition expired on January 20, 2014, but that the instant petition extension was not filed until January 27, 2014, seven days after the expiration of the petition it sought to extend. Accordingly, we dismissed the appeal in a decision issued on Tuesday, February 3, 2015.²

The Petitioner filed a combined motion to reopen and reconsider, contesting the decision on appeal. That motion was received by the U.S. Citizenship and Immigration Services (USCIS) Lockbox on

¹ This decision will hereinafter refer to the Acting Director as “the Director.”

² We also properly gave notice to the Petitioner that any motion must be filed within 33 days of the date of the decision.

March 9, 2015, but rejected on March 16, 2015, as incomplete. Another motion was subsequently received by USCIS on Tuesday, March 24, 2015, 49 days after our decision dismissing the appeal.

We denied that motion based on its untimely filing on June 2, 2015. We also found that, had the visa petition been timely filed, it would have been denied as it did not meet the requirements of a motion to reconsider or a motion to reopen. We explained in that decision that the motion to reopen did not state any new facts that would be presented if the proceeding was reopened and did not include any evidence that would likely change the result of the appeal if it was reopened to consider them. We also explained that the motion to reconsider was a restatement of the Petitioner's appeal, and therefore, it did not articulate how our February 3, 2015, decision misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record that was before us when we rendered the decision to dismiss the appeal. We also noted that the Petitioner did not challenge our finding that the extension petition was filed late.³

The Petitioner subsequently filed another motion. That motion was rejected by USCIS on July 8, 2015, for failure to provide "Information about the Appeal or Motion." The instant motion to reconsider was delivered to USCIS on Wednesday, July 15, 2015, 43 days after our decision on the previous motion was issued.

II. MOTION TO RECONSIDER FILED LATE

A. Regulatory Framework

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states the following, in pertinent part: "Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider."

If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). Every benefit request submitted to USCIS must be executed and filed in accordance with the form instructions and with the required fee(s). *See* 8 C.F.R. § 103.2(a)(1) and (6). The date of filing is not the date of mailing, but the date when USCIS receives the intended motion properly completed, signed, and accompanied by the required fee as specified by the Form I-290B instructions. *See* 8 C.F.R. § 103.2(a)(7)(i) and (b)(1). A benefit request which is rejected will not retain a filing date, and there is no appeal from the rejection. 8 C.F.R. § 103.2(a)(7)(iii). Neither the Act nor the pertinent regulations grant us the authority to extend the 33-day time limit for filing a motion to reconsider.

³ The decision denying the motion as late was issued on June 2, 2015. In that decision we gave the Petitioner notice that, if it wished to file a second motion, contesting the decision in that first motion, it had 33 days in which to do so.

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B. Discussion and Order

As noted above, the instant motion was delivered to USCIS on Wednesday, July 15, 2015, 43 days after the decision on the previous motion, the decision which it seeks to reconsider, was issued. Any motion that does not meet applicable requirements shall be denied. *See* 8 C.F.R. § 103.5(a)(4). The motion to reconsider was untimely filed and must be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of M-I-G-*, ID# 15451 (AAO Dec. 23, 2015)