



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

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

MATTER OF M-I-G-

DATE: MAY 31, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a gymnastics school, seeks to extend the Beneficiary's temporary employment as a gymnastics coach under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Beneficiary was not eligible for an H-1B extension beyond six years under the American Competitiveness in the Twenty-first Century Act. The Petitioner appealed the Director's decision to our office and we dismissed the appeal. Subsequently, the Petitioner submitted a motion to reopen and a motion to reconsider, 49 days after dismissal of the appeal. We denied the combined motion as untimely filed, and for not meeting the requirements of a motion to reopen and a motion to reconsider. Then, the Petitioner submitted a motion to reconsider our denial of the combined motion, which was filed 43 days after our decision. We therefore denied the motion to reconsider as being untimely filed.

The matter is again before us on a motion to reopen and a motion reconsider. In its motion, the Petitioner submits a brief and asserts that the Director erred in denying the petition and we erred in dismissing the appeal.¹

We will deny the combined motion.

¹ We note that this motion is filed in response to our decision on December 23, 2015. Therefore, the scope of this motion is limited to whether our decision to deny the motion to reconsider on December 23, 2015, was correct.

Further, the Petitioner makes the same assertions previously raised, which we have already addressed in our prior decisions.

(b)(6)

Matter of M-I-G

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part, the following:

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. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

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).

II. ANALYSIS

We issued the decision to deny the motion on December 23, 2015. The decision provided notice to the Petitioner of the timeframe to file a motion. USCIS received the Petitioner's Form I-290B, Notice of Appeal or Motion, on January 26, 2016, which is 34 days after our decision was issued.

Regarding the motion to reconsider, neither the Act nor the pertinent regulations grant us the authority to extend the 33-day time limit for filing a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i). Therefore, we will deny the motion to reconsider.

Regarding the motion to reopen, under 8 C.F.R. § 103.5(a)(1)(i), the late filing of a motion to reopen may be excused if the Petitioner demonstrates that the delay was reasonable and beyond its control. In a letter filed with this motion, the Petitioner asserts that this motion is "being [redacted] overnight on January 24, 2016 to be received on January 25, 2016, due to [sic] January 23, 2016 falling on a Saturday." However, such explanation does not demonstrate that the delay was reasonable and beyond the control of the Petitioner. For example, there is no explanation on why the Petitioner could not have filed the motion before January 23, 2016. Therefore, we will deny the motion to reopen.²

² We note, however, that even if the Petitioner had established that the delay was reasonable and beyond its control, we would not grant the motion because the Petitioner did not provide any new facts pertaining to why our prior denial of the motion to reconsider, which was also untimely filed, was incorrect. The regulation at 8 C.F.R. § 103.5(a)(2), "Requirements for motion to reopen," states: "A motion to reopen must [(1)] state the new facts to be provided in the

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.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-I-G-*, ID# 17213 (AAO May 31, 2016)

reopened proceeding and [(2)] be supported by affidavits or other documentary evidence.” The Petitioner did not mention any new facts or provide supporting documentary evidence in support of the present motion to reopen.