



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

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

MATTER OF L-I-S-C-, U.S.B-

DATE: NOV. 4, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an information services firm, seeks to extend the Beneficiary's employment as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition, and we rejected the Petitioner's appeal as untimely filed. The matter is now before us on a motion to reconsider. The motion will be denied.

I. MOTION REQUIREMENTS

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 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."

B. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(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 4 of the Form I-290B, which states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions when filed and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

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* 8 C.F.R. § 103.5(a)(3) 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.

II. DISCUSSION AND ANALYSIS

The submission constituting the motion to reconsider consists of: (1) the Petitioner’s Form I-290B and supporting statement dated May 7, 2015; (2) a copy of our decision dated April 8, 2015; and (3) a copy of the Petitioner’s mailing receipt for the appeal of the Director’s decision.

The record indicates that the Director issued the decision denying the petition on August 27, 2014. It is noted that the Director properly gave notice to the Petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant us authority to extend this time limit.

On motion, the Petitioner states that the appeal was timely filed as it was postmarked on the 33rd day after the Director’s decision was issued. The Petitioner states that we have misinterpreted the regulation at 8 C.F.R. § 103.2(a)(7)(i) and that the date of mailing, not the actual receipt date, determines the filing date.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the actual date of receipt at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i).

Although the Form I-290B, Notice of Appeal or Motion, was dated September 29, 2014, it was not received at the designated filing location until September 30, 2014, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

The plain language of the applicable regulation does not support the Petitioner's interpretation that the receipt date should be the mailing date, as it expressly specifies the means by which the date an application or petition is deemed received for purposes of meeting filing deadlines. When a procedural rule is clear, as it is here, *see infra*, the courts have declined to apply a date mailed policy in place of a rule's date received requirement. *See In Re J-J-*, 21 I&N Dec. 976, 982 (BIA 1997); *Guirgus v. INS*, 993 F.2d 508, 510 (5th Cir. 1993) (holding a petition for review of the Board of Immigration Appeal's final order is "filed" on the day of receipt by the Court of Appeals).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. *Id.* In this case the Director denied the petition on August 27, 2014. The Petitioner subsequently filed an appeal on September 30, 2014, 34 days after the decision. As such, we properly rejected the appeal as untimely filed pursuant to 8 C.F.R. §§ 103.3(a)(2)(i) and 103.3(a)(2)(v)(B)(1). Accordingly, the motion to reconsider must be denied.

III. CONCLUSION

The Petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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, our previous decision will not be disturbed.

ORDER: The motion to reconsider is denied.

Cite as *Matter of L-I-S-C-, U.S.B-*, ID# 14429 (AAO Nov. 4, 2015)