



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

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

MATTER OF S-, LLC

DATE: SEPT. 21, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a management and import/export consulting firm, seeks to temporarily employ the Beneficiary as its President/Chief Executive Officer under the nonimmigrant L-1A intracompany transferee classification. *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. We dismissed the Petitioner's appeal of that decision, denied its subsequent combined motion to reopen and motion to reconsider, and most recently rejected the Petitioner's second appeal. The matter is now before us on a second combined motion to reopen and motion to reconsider. The motion will be denied.

I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this combined motion will be denied because the motion does not merit either reopening or reconsideration.

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."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), “*Requirements for motion to reopen*,” states that “[a] motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence”

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states that motions to reopen “must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . was filed.”¹

Further, the new facts must possess such significance that, “if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case.” *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

C. 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 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 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).

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, that “[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.”

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 combined motion consists of the following: (1) the Form I-290B, Notice of Appeal or Motion; (2) a letter submitted by counsel; (3) the brief and supporting documents previously submitted in support of the Petitioner’s December 2012 motion to reopen and to reconsider which was fully discussed in our April 22, 2013 decision; and (4) the untimely filed brief, dated June 21, 2013, which was submitted in support of the Petitioner’s improperly filed appeal.² In the March 6, 2015, letter submitted in support of this combined motion, the Petitioner, through counsel, acknowledges that the Form I-290B, filed May 28, 2013, was not properly filed.

A. Denial of the Motion to Reopen

Upon review, we find that the Petitioner did not provide any new facts in this motion. Additionally, we observe that all documents submitted in support of this motion were previously available. The submission of a late-filed brief on a subsequent motion does not cure its initial improper filing. Moreover, the June 21, 2013 late-filed brief, upon review, does not present any new facts for consideration. As such, the Petitioner has not established that the information submitted on this motion would change the outcome of this case if the proceeding were reopened.

“There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases.” *INS v. Abudu*, 485 U.S. 94, 107 (1988). Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485

² The June 21, 2013 brief was not submitted timely as it was submitted more than 33 days subsequent to the date the AAO’s motion decision was issued (April 22, 2013). Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to this office in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R §§ 103.5(a)(2) and (3). The Petitioner’s Form I-290B filed on May 28, 2013 did not meet the requirements of a motion to reopen or reconsider.

U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden” of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the Petitioner has not met that burden.

B. Denial of the Motion to Reconsider

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) (detailing the requirements for a motion to reconsider).

On motion, the Petitioner reiterates the Beneficiary’s skills and his wishes to expand the Petitioner’s operations. However, the Petitioner does not properly state the reasons for reconsideration. The Petitioner does not articulate how our prior decisions were based on an incorrect application of law or policy. In dismissing the Petitioner’s appeal, we issued a 14-page comprehensive analysis of the deficiencies of the record on November 8, 2012, and we reiterated the continuing deficiencies in our April 22, 2013, decision denying the Petitioner’s previous combined motion. The Petitioner acknowledges that our February 3, 2015 rejection of the improperly filed appeal was correct. There is nothing submitted for the record subsequent to these decisions that articulates how our decisions misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when our decisions were rendered. The Petitioner has not submitted any document that would meet the requirements of a motion to reconsider. 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 reopen or 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, the combined motion will be denied, the proceedings will not be reopened or reconsidered, and our previous decisions will not be disturbed.

ORDER: The motion is denied.

Cite as *Matter of S-, LLC*, ID# 13637 (AAO Sept. 21, 2015)