



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

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

MATTER OF B-I-USA CORP.

DATE: APR. 21, 2016

MOTION ON AAO DECISION

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

The Petitioner, a corporation organized in the State of New Jersey that engages in the wholesale of general merchandise, seeks to extend the employment of its vice-president under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Petitioner subsequently filed a total of three appeals and ten motions with our office. Most recently, we denied the Petitioner's tenth motion to reopen and reconsider in a decision dated September 10, 2015.

The matter is again before us on a combined motion to reopen and reconsider. In its motion, the Petitioner asserts that the Director and AAO did not consider all of the facts contained in the record and ignored the relevant statutory provisions in denying the petition and dismissing the initial appeal.

Upon review, we will deny the combined motion.

## I. MOTION REQUIREMENTS

### A. Overarching Requirement for Motions by a Petitioner

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits the authority of an officer of U.S. Citizenship and Immigration Services (USCIS) to reopen a proceeding or reconsider a decision to instances where "proper cause" has been shown for such action. Thus, to merit reopening or reconsideration, not only must the submission meet the formal requirements for filing (such as, for instance, submission of a Form I-290B, Notice of Appeal or Motion, that is properly completed and signed, and accompanied by the correct fee), but the Petitioner must also show proper cause for granting the motion. The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[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) 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: “**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition or application was filed.”<sup>1</sup>

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 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 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.”

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<sup>1</sup> The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every 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, such instructions are incorporated into the regulations requiring its submission.

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).

## II. DISCUSSION AND ANALYSIS

The Director denied the original extended petition on February 24, 2004, concluding that the Petitioner did not establish that the Beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Although we summarily dismissed the Petitioner's appeal on February 1, 2006, the Petitioner subsequently filed a motion to reopen that was granted for the purpose of considering a timely filed appellate brief that had not been incorporated into the record prior to our initial decision. As discussed in our previous decisions, we issued a 14-page decision affirming the Director's decision to deny the petition on May 17, 2007.

The Petitioner then filed a second appeal, which we rejected as improperly filed, noting that we do not exercise appellate jurisdiction over our own decisions and that the appeal did not meet the requirements for a motion to reopen or reconsider. The Petitioner next filed a motion, which was denied, followed by a third appeal, which we rejected, once again noting that we do not exercise appellate jurisdiction over our own decisions. The Petitioner proceeded to file nine subsequent motions to reopen and reconsider, all of which were denied. The most recent motion was denied in a September 10, 2015, decision in which we found that combined the motion did not meet the applicable requirements of a motion to reopen or reconsider set out at 8 C.F.R. § 103.5. The Petitioner has now filed another combined motion to reopen and motion to reconsider.

When a motion is filed, 8 C.F.R. § 103.5(a)(1)(i) authorizes us to reopen or to reconsider the *immediate prior* decision which, in the matter of this motion, is our decision of September 10, 2015. As in our prior decisions, we stress again that in order to establish merit for reopening our latest decision, the Petitioner must: (1) provide new facts relevant to the *most recent decision*, and (2) support those facts with affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In order to establish merit for reconsideration of our latest decision the Petitioner must: (1) state the reasons why the Petitioner believes *the most recent decision* was based on an incorrect application of law or policy; and (2) specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believed we misapplied in our prior decision.

In our most recent decision dated September 10, 2015, we found that the combined motion to reopen and reconsider was filed 53 days after the previous decision, and as such it was untimely filed. The regulations at 8 C.F.R. § 103.5(a)(1)(i), allows us to accept an untimely filed motion to reopen when the delay is both reasonable and beyond the affected party's control. We noted in our decision that the record did not establish that the Petitioner's late filing of the motion to reopen was reasonable and beyond the affected party's control, and as there is no such provision to accept untimely filings for motions to reconsider, the combined motion was untimely and must be denied for that reason. We further found that even if the combined motion had been timely filed, the motion did not meet the requirements of either a motion to reopen or reconsider, and that the combined motion must also

be denied for this reason. It is this September 10, 2015, decision that is the subject of the motion currently before us.

With the combined motion to reopen and reconsider before us now, the Petitioner submits a brief. The brief addresses the propriety of the Director's February 24, 2004, decision denying the visa petition and our May 17, 2007, decision dismissing the appeal of that denial. The Petitioner's assertions pertinent to those decisions will not be considered because, as was explained above, the propriety of those decisions is not before us. Rather, as noted, it is the September 10, 2015, decision that is the relevant subject of this motion. The Petitioner's motion brief does not address the reasoning of our most recent decision or present any argument pertinent to the propriety of our September 10, 2015, decision denying the combined motion to reopen and reconsider.

Again, a motion to reopen must state new facts and support those facts with affidavits or other documentary evidence. Here, the Petitioner has not stated any new facts or submitted new evidence relevant to the September 10, 2015, decision. As such, the motion before us does not meet the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2).

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. Here, the Petitioner does not address the propriety of our September 10, 2015, decision and does not assert that this decision was incorrect based on the evidence of record at the time of that decision. Therefore, the motion before us does not satisfy the requirements of a motion to reconsider as stated at 8 C.F.R. § 103.5(a)(3).

### 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 B-I-USA Corp.*, ID# 16552 (AAO Apr. 21, 2016)