



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

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

MATTER OF GICS- LLC

DATE: APR. 25, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a Tennessee limited liability company claiming to engage in “shipping and procurement in energy services,” seeks to extend the Beneficiary’s temporary employment as its Managing Director/CEO 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 Director concluded that the Petitioner did not establish that the Beneficiary has been and will be employed in a qualifying managerial or executive capacity in the United States. The Petitioner filed a motion to reopen and a motion to reconsider the Director’s decision. The Director granted the combined motion and subsequently affirmed the petition’s denial. The Petitioner filed a second motion to reopen, which was denied. The Petitioner then filed an appeal with our office, which we dismissed on two alternate grounds, concluding that the Petitioner did not establish that: (1) the Beneficiary would be employed in a managerial or executive capacity, and (2) the United States and foreign entities are qualifying organizations.

The matter is now before us on a combined motion to reopen and reconsider. In its combined motion, the Petitioner asserts that the Beneficiary is employed in an executive capacity in the United States. However, the Petitioner does not address our findings in regards to its qualifying relationship with the foreign entity.

Upon review, we will deny the combined motion.

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.”

The pertinent section of the motion regulations, 8 C.F.R. § 103.5(a)(1)(i), states:

[A]ny 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.

Emphasis added.

The date of filing is not the date of mailing, but the date when U.S. Citizenship and Immigration Services (USCIS) receives the intended motion (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion, instructions; and (2) at the location that those instructions designate for filing motions.¹

B. Requirements for Motions to Reopen

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 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.”

¹ See 8 C.F.R. §§ 103.2(a)(1) (“every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions” and with whatever fees are required by regulation); 103.2(a)(6) (form instructions specify filing location).

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 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 OF LATE FILING

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party has 30 days from the date of an adverse USCIS decision to file a motion to reopen the proceeding or to reconsider the decision. If the adverse decision was served by mail, an additional

three-day period is added to the 30-day period. *See* 8 C.F.R. § 103.5a(b). Also, any motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

We dismissed the Petitioner's appeal in a decision issued on December 16, 2015. We also properly gave notice to the Petitioner that any motion must be filed within 33 days of the date of the decision. The Form I-290B is dated January 14, 2016, 29 days after the decision was issued. According to the U.S. Postal Service, it was not received by USCIS until Thursday, January 21, 2016, 36 days after the decision was issued. Accordingly, the combined motion was untimely filed.

A. Motion to Reopen

The regulations permit USCIS, in its discretion, to excuse the untimely filing of the motion-to-reopen component of this combined motion were it demonstrated that the delay was both (a) reasonable and (b) beyond the control of the Petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i). However, upon review of all of the submissions constituting the motion we find no basis for finding that the untimely filing was either reasonable or beyond the control of the Petitioner.

As the record does not establish that the failure to file the motion to reopen within 33 days of our decision was reasonable and beyond the affected party's control, the motion to reopen component of this combined motion is untimely and must be denied for that reason.

B. Motion to Reconsider

Neither the Act nor the pertinent regulations grant us authority to extend the 33-day time limit for filing a motion to reconsider. Therefore, the motion to reconsider component of this combined motion is untimely and must also be denied for that reason.

III. DISCUSSION OF APPLICABLE REQUIREMENTS

Although the late filing of the combined motion is dispositive, requiring the motion's denial, we shall also address in summary fashion why the combined motion would have to be denied even if it had been timely filed.

A. Motion to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2) states in pertinent part that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 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 Maoutougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

Here, the Petitioner did not state new facts supported by evidence that would likely change the outcome of the case. Rather, the Petitioner submitted a copy of the Beneficiary's resume and payroll slips that were previously entered into the record. These documents do not represent new facts and would not change the outcome of the case if the proceedings were reopened. Moreover, while the appeal was dismissed on two grounds, the Petitioner only addresses the Beneficiary's employment in a managerial or executive capacity. The Petitioner does not address our finding that the record did not establish that the U.S. and foreign entities are qualifying organizations. Accordingly, the motion to reopen component of this combined motion would not meet applicable requirements and would have to be denied, even if it had not been filed late. *See* 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

As stated above, a motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations or precedent decisions in order to establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

Here, the Petitioner does not state a reason for reconsideration of our decision nor does the Petitioner identify any pertinent statutes, regulations or precedent decisions to establish that our decision was incorrect based on the evidence of record at the time of the initial decision. As such, the motion to reconsider component of the combined motion would also have to be denied even if it had not been untimely filed. *See* 8 C.F.R. § 103.5(a)(4).²

IV. CONCLUSION

As the combined motion to reopen and motion to reconsider was untimely filed, it must be denied pursuant to 8 C.F.R. § 103.5(a)(4) for failure to meet applicable filing requirements. 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 GICS- LLC*, ID# 17216 (AAO Apr, 25, 2016)

² As noted in regard to the motion to reopen, while the appeal was dismissed on two grounds, the Petitioner's motion did not address the second ground of denial.