



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

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

MATTER OF A-G-O-I-, LLC

DATE: JULY 18, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a company engaged in managing, owning, and operating a chain of fast food restaurants, seeks to extend the Beneficiary's temporary employment as its director/vice president under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 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 on November 5, 2013, finding that the Petitioner did not establish that: (1) the Beneficiary will be employed in a managerial or executive capacity in the United States; (2) the Beneficiary was employed abroad in a managerial or executive capacity; and (3) the Petitioner had the office space available to house all of its employees and run its operation. The Petitioner subsequently filed an appeal with our office. On September 25, 2014, we dismissed the Petitioner's appeal based on a finding that the Petitioner did not establish that: (1) the Beneficiary will be employed in a managerial or executive capacity under the extended petition; and (2) the Beneficiary was employed in a managerial or executive capacity at the foreign entity. The Petitioner filed a second appeal, which was rejected by our office on June 9, 2015. The Petitioner subsequently filed a motion to reconsider our decision to reject the second appeal, which we denied December 29, 2015.

The matter is now before us on a motion to reconsider. In its motion, the Petitioner asserts that there is no express law or regulation that prohibits the filing of an appeal to an Administrative Appeals Office (AAO) decision and that the AAO has jurisdiction to review its own decisions.

Upon review, we will deny the motion to reconsider.

## 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 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, 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. 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 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.

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

When a motion is filed, 8 C.F.R. § 103.5(a)(1)(i) authorizes us to reconsider or to reopen the *immediate prior* decision which, in the matter of the instant motion, is our December 29, 2015, decision denying the previous motion to reconsider. In that decision, we denied the Petitioner's motion to reconsider based on a finding that the Petitioner did not meet the requirements of a motion to reconsider. Specifically, we found that there is no statutory or regulatory provision that permits a petitioner to file, and for us to review, more than one appeal with regard to the same petition, and as such the decision to reject the second appeal was correct. We also found that even if the Petitioner had correctly filed the second appeal as a motion, the motion would have been denied for failing to meet applicable requirements. Namely the absence of new facts or citations to pertinent statutes, regulations, or precedent decisions would have prevented us from reopening or reconsidering the proceedings.

The Petitioner now files a second motion to reconsider, again asserting that there is no express law or regulation that prohibits the filing of a subsequent appeal and that unpublished non-precedent decisions should be considered when evaluating whether or not a motion to reconsider meets the applicable requirements.

Here, the Petitioner continues to make the same assertions it previously stated that we are not prohibited by statute or regulation from reviewing a second appeal of our own decision. As a threshold matter, it is noted that we conduct our review of each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The term "appeal" is defined as a proceeding undertaken to have a decision reconsidered by a higher authority or the submission of a lower court's or agency's decision to a higher court for review and possible reversal. Black's Law Dictionary (10th Ed. 2014). Applying this definition to the facts in the matter at hand, we find that by filing a second appeal the Petitioner improperly sought a second *de novo* review from the same administrative agency – the AAO – that issued the original appellate decision. Such action is expressly prohibited in the Form I-290B instructions, which state, "An adverse decision from the AAO may not be further appealed to the AAO."<sup>1</sup> The instructions found on the cover page of our original decision expressly informed the Petitioner that it could file a motion on a Form I-290B. The instructions did not include any circumstances for the filing of an appeal in response to our appellate decision. Moreover, while 8 C.F.R. § 103.1(f)(3)(iii)(J) expressly states that we have appellate jurisdiction over petitions for temporary workers, there is no regulation that grants us appellate jurisdiction over our own decisions that result from the Petitioner's filing of the Form I-290B.

As we previously stated in our December 29, 2015, decision, there is no statutory or regulatory provision that permits a petitioner to file, and for us to review, more than one appeal with regard to the same petition. See 8 C.F.R. § 103.3(a)(1)(ii). In fact, the very absence of language regulating such a filing is in itself an indication that the Petitioner is not permitted to file an appeal of an appeal where an agency would be asked to conduct appellate review of its own decision. Although 8 C.F.R.

---

<sup>1</sup> See Form I-290B Instructions, p. 4 (01/23/14).

§ 103.5(a) expressly discusses the Petitioner's right to file a motion to reopen or reconsider, pursuant to which we are permitted to conduct a limited review of our own appellate decision, the Form I-290B that the Petitioner filed on October 28, 2014, clearly indicates that the Petitioner intended to file an appeal rather than a motion. In addition, the instructions found on the cover sheet that precedes all of our decisions expressly states that the Petitioner is limited to filing a motion in cases where it either seeks to present new facts for consideration or believes that our decision on appeal was incorrect in terms of our application of current law or policy.

Further, we note the Petitioner's contentions that we denied the Petitioner's second appeal "based on the title and the accompanying I-290[B] form instead of on the content and merits of the presented argument." Here, the Petitioner contends that the content of its second appeal explained why the AAO's denial of its first appeal was erroneous and therefore, should have been considered a motion to reconsider, rather than an appeal. However, we do not have the authority to amend a petitioner's Form I-290B. The Form I-290B instructions clearly state, "You must clearly indicate if you are filing an appeal or motion . . . you can file one or the other using a single Form I-290B."<sup>2</sup> Therefore, the Petitioner's contentions that its second appeal can be and should have been considered as a motion to reconsider are not valid. The Petitioner has not cited to any statute, regulation, or precedent decision to overcome this finding and as such, we will not reconsider our prior decision.

Furthermore, the Petitioner contends that we erred in finding that its previous motion was insufficient to meet the requirements of a motion to reconsider as it solely referenced unpublished decisions issued by this agency. The Petitioner asserts that we are bound by constitutional law to consider all of the previously unpublished decisions when making a determination. The Petitioner's arguments are not persuasive. The regulations governing a motion to reconsider are clear. A petitioner must establish that the prior decision was incorrect based on the evidence of record and support its request for reconsideration with citations to appropriate statutes, regulations, or precedent decisions. Citing to unpublished non-precedent decisions is not sufficient to meet the requirements of a motion to reconsider. Moreover, the portion of the Petitioner's previous brief citing the non-precedent cases refers solely to the dismissal of the underlying appeal, and not to the December 29, 2015, decision which is properly considered here. Therefore, as the non-precedent cases cited by the Petitioner are not relevant to these proceedings, they will not be discussed further.

### 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.

---

<sup>2</sup> See Form I-290B Instructions, p. 4 (01/23/14).

*Matter of A-G-O-I, LLC*

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of A-G-O-I, LLC*, ID# 17600 (AAO July 18, 2016)