



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

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

In Re: 8583403

Date: JULY 7, 2020

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner seeks to temporarily employ the Beneficiary in the United States as the director of finance and administration of its new office¹ under the L-1A nonimmigrant classification for intracompany transferees. 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 a managerial or executive capacity.

The Director of the Vermont Service Center denied the petition on September 12, 2017, concluding that the Petitioner did not establish that (1) the new office will support a managerial or executive position within one year after the approval of the petition; and (2) the Beneficiary has been employed abroad in a managerial or executive capacity. The Director denied an ensuing motion on March 6, 2018. On September 13, 2018, we rejected a subsequent appeal for untimely filing, and we dismissed two additional motions on March 26, 2019, and October 4, 2019. The matter is now before us on a motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen and the motion to reconsider.

I. MOTION REQUIREMENTS

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or

¹ The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

Department of Homeland Security policy. *Id.* In addition, a petitioner must submit “a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

A. Motion to Reopen

On motion, the Petitioner reasserts that the Director failed to notify it of the time period for filing an appeal in her March 6, 2018, decision.² It also resubmits previously submitted evidence in support of its assertion that the new office will support a managerial or executive position within one year after the approval of the petition, and that the Beneficiary has been employed abroad in a managerial or executive capacity. However, the Petitioner’s motion to reopen does not state new facts. *See* 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute new facts. Thus, the Petitioner has not shown proper cause to reopen the proceeding, and we will dismiss the motion to reopen.

B. Motion to Reconsider

Here, the underlying decision on motion is our October 4, 2019, dismissal of the Petitioner’s prior motion to reconsider. In our October 4, 2019, decision, we determined that the statement submitted with the Petitioner’s prior motion did not meet the requirements of a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). The Petitioner’s brief submitted with the current motion does not assert that our October 4, 2019, decision was based on an incorrect application of law or policy related to the requirements for filing a motion to reconsider. *See id.* Instead, the Petitioner asserts that the Director’s prior decisions dated September 12, 2017, and March 6, 2018, and our September 13, 2018, decision, were based on an incorrect application of law or policy.

Regarding the prior proceeding, it states that our October 4, 2019, decision provided “the opportunity for rebuttal and another opportunity to file an I-290B.” This does not, however, meet the standard of 8 C.F.R. § 103.5(a)(3). Thus, the Petitioner has not shown proper cause for us to reconsider the prior proceeding, and we will dismiss the motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

² The Petitioner made the same assertion in its prior two motions.