



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

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

In Re: 27203224

Date: JUNE 9, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner operates a grocery store and seeks to temporarily employ the Beneficiary as general manager and chief executive officer of its claimed new office under the L-1A nonimmigrant classification for intracompany transferees.¹ Immigration and Nationality 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 California Service Center denied the petition in July 2019, concluding that the Petitioner had not established that it would employ the Beneficiary in a managerial or executive capacity within one year of the petition's approval. The Director also questioned the Petitioner's eligibility to file a "new office" petition on behalf of the Beneficiary, noting that an affiliate of the Petitioner, which operated the same retail establishment at the same location and no longer exists, had previously employed the Beneficiary under another L-1A new office petition.² We dismissed the Petitioner's appeal as well as its three subsequent motions, the first of which was a motion to reconsider followed by two combined motions to reopen and reconsider. In our most recent decision, we dismissed the motion to reopen, concluding that the Petitioner's latest "business proposal," which is dated September 2022, did not establish that the Petitioner's franchise plan existed in 2018, when this petition was filed, and therefore the proposal does not serve as evidence of the Petitioner's eligibility at the time of filing.³ We also dismissed the motion to reconsider, concluding that the Petitioner did not identify any error of law or policy or establish that our previous decision was incorrect when we issued it in August 2022. The matter is now before us again on another combined motion to reopen and reconsider, the Petitioner's fourth motion.

¹ A petitioner seeking treatment as a new office must establish that it is 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).

² The record reflects that the Petitioner's former affiliate, [REDACTED], which was owned by the same foreign parent company as the Petitioner, filed a new office petition on the Beneficiary's behalf; that petition was approved and valid from November 16, 2016, until October 31, 2017. The affiliate's subsequent petition to continue the Beneficiary's employment was denied by the Director of the California Service Center and we dismissed its appeal of that decision on [REDACTED] 2018. The Petitioner in this matter was incorporated one week later on [REDACTED] 2018.

³ The claim that the Petitioner is a new office because its business model includes plans to franchise its operations was raised for the first time on appeal. The Petitioner relied on the claimed new business model as a means of distinguishing its operations from those of its former affiliate and thereby qualifying the Petitioner as a new office.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

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 prior 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). The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Likewise, we will only consider legal arguments that pertain to our latest decision dismissing the motion to reconsider. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

Here, the Petitioner provides a statement summarizing the definition of “new office” along with photocopied excerpts from the USCIS Policy Manual, general information posted by USCIS online regarding the L visa classifications, and 8 C.F.R. § 214.2(l)(1) - (2), which contains relevant definitions and general filing criteria for intracompany transferees. All of this information was previously available and does not offer new facts. Thus, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

Further, regarding the Petitioner’s contentions in the current motion to reconsider, the Petitioner merely reargues facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”). Namely, the Petitioner argues, as in prior filings, that it qualifies as a new office and that our prior decision to the contrary was incorrect. Because the Petitioner has not established that our prior 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, the Petitioner has not met the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Accordingly, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.