



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

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

In Re: 29042083

Date: NOV. 17, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a restaurant, seeks to temporarily employ the Beneficiary as president of its new office 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 a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that: (1) it had secured sufficient physical premises for the new office; (2) the Beneficiary had been employed abroad in a qualifying managerial or executive capacity; and (3) it would employ the Beneficiary in a qualifying managerial or executive capacity within one year after approval of the petition. We summarily dismissed the Petitioner's appeal and dismissed three subsequent motions to reopen or reconsider. The matter is now before us on a motion to reopen.

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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).

On motion, the Petitioner does not submit any new evidence.

For context, here is a timeline of this proceeding:

May 1, 2019:	The Director denied the petition.
May 28, 2019:	The Petitioner filed an appeal, stating that its "brief and/or additional evidence is attached," but the appeal did not include any brief or additional evidence.

January 28, 2020: We summarily dismissed the appeal, as required by 8 C.F.R. § 103.3(a)(1)(v), because the appeal did not specifically identify any erroneous conclusions of law or fact in the underlying decision.

February 20, 2020: The Petitioner filed a motion to reconsider, contesting the May 2019 denial of the petition but not the January 2020 summary dismissal of the appeal.

June 8, 2020: We dismissed the motion because it did not show that our January 2020 decision was based on an incorrect application of law or policy, and did not establish that the January 2020 decision was incorrect based on the record at the time of that decision, as required by 8 C.F.R. § 103.5(a)(3).

June 24, 2020: The Petitioner filed a motion to reopen, submitting copies of previously submitted documents and disputing the Director's May 2019 denial decision.

December 31, 2020: We dismissed the second motion, stating the motion did not assert any new facts and did not overcome the January 2020 summary dismissal of the appeal.

March 23, 2021: The Petitioner filed a motion to reopen, submitting documents relating to its claimed business activities and news articles relating to denial rates for L-1 nonimmigrant petitions.

March 22, 2023: We dismissed the third motion as untimely, because the Petitioner filed the motion 19 days after the expiration of the filing deadline. That deadline had been extended to 63 days owing to temporary filing flexibilities relating to COVID-19.

Now, on its fourth motion, the Petitioner states that it had misread the instructions relating to the extended filing deadlines, and believed that it had 90 days to file the motion.

We may, at our discretion, excuse the untimely filing of a motion to reopen if the petitioner demonstrates that the delay was reasonable and beyond the petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i). The Petitioner's misunderstanding of the filing instructions was not beyond the Petitioner's control. Leaving aside their relevance to the motion, the media articles submitted on motion were published in April 2014, May 2018, and November 2020. The Petitioner does not claim that they were unavailable to the Petitioner during the time allotted to file a timely motion in response to our December 2020 decision.

The Petitioner also observes that "[t]he Service did however extend the 90 day response time for the Decisions at a later date." This revised guidance applies only to filings relating to decisions issued between November 1, 2021 and March 23, 2023.¹ As such, it does not give us discretion to accept the Petitioner's untimely motion from our December 2020 decision.

Because the Petitioner has not stated new facts to warrant reopening of the proceeding, the motion does not meet the requirements of a motion to reopen and must be dismissed. 8 C.F.R. § 103.5(a)(4).

Furthermore, even if we were to disregard the untimely filing of the March 2021 motion, we would not approve the underlying petition. 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). Here, the Petitioner's March 2021

¹ *See USCIS Extends COVID-19-related Flexibilities*, <https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-1>.

motion did not cite new facts to show that we erred in dismissing the prior motion. Instead, the Petitioner disputed the grounds for denial of the petition. Because the Petitioner did not establish new facts that would warrant reopening of the proceeding, we had no basis to reopen our prior decision.

We summarily dismissed the Petitioner's May 2019 appeal because it did not, as required, identify any errors of law or fact in the Director's denial decision. In its subsequent motions, the Petitioner has not established that the summary dismissal was in error. Instead, the Petitioner argued the merits of the petition, disputing the denial decision. Because the Petitioner did not overcome the summary dismissal of the appeal, we will not consider the merits of the underlying petition at this late date. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.