



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

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

In Re: 28157467

Date: OCT. 12, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to operate a convenience store and to temporarily employ the Beneficiary as the general operations director of its new office¹ 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 the record did not establish that: 1) the Beneficiary was employed abroad in a managerial or executive capacity, and 2) the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of the approval of the petition. The Petitioner filed an appeal that we dismissed. The Petitioner later filed a motion to reopen and a motion to reconsider, both of which we dismissed. The Petitioner then filed a motion to reconsider that we dismissed as untimely. The matter is now before us again on a motion to reconsider. 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 to reconsider.

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). 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.

On motion, the Petitioner requests that we consider the previously dismissed Form I-290B, Notice of Appeal or Motion as timely filed, indicating that it “had no intention to fil[e] the [motion] late.” The Petitioner states that they read online articles indicating that U.S. Citizenship and Immigration Services (USCIS) had extended the time to file Forms I-290B by sixty days and that they “failed to understand that the Form I-290B was only given an additional 30 days to respond.”

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.

In our prior dismissal decision, we stated that we issued a decision on December 22, 2020, and that the Form I-290B filed after this decision was received at the filing location on March 15, 2021, or 83 days after the decision. We concluded the motion was untimely, since USCIS guidance specific to the coronavirus pandemic at the time indicated that Forms I-290B must be received within 60 days of the unfavorable decision (or 63 days, taking into account service by mail). The regulations do not allow the filing of a motion to reconsider more than 30 days after the decision in which it seeks to reconsider, or in this case 63 days after the date of the decision pursuant to coronavirus guidance issued at the time of our dismissal in December 2020. In contrast to a motion to reopen, it is noteworthy that the regulations provide no exception to the requirement to file a timely motion to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i).

On motion, the Petitioner does not dispute the correctness of our prior determination, acknowledging that they were mistaken about the USCIS filing extension related to Forms I-290B during the coronavirus pandemic at the time the motion was filed. As such, as a preliminary matter, the Petitioner has not articulated how our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. Furthermore, even if the regulations allowed us to excuse the lateness of the March 2021 motion to reconsider, the Petitioner has not articulated in support of the current motion what we are to reconsider with respect to the merits of the matter. Therefore, the motion will be denied as it does not meet the regulatory requirements of a motion to reconsider.

ORDER: The motion to reconsider is dismissed.