



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

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

In Re: 20076325

Date: APR. 26, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, an engineering consulting firm, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; and (3) the Beneficiary engaged in qualifying employment abroad for at least one year during the three years preceding the filing of the petition. We dismissed the Petitioner's appeal from the Director's decision. The Petitioner filed a combined motion to reopen and reconsider, which we dismissed as untimely filed. The matter is now before us on a second combined motion to reopen and 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 combined motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) where the petitioner demonstrates that the delay was reasonable and was beyond the petitioner's control. 8 C.F.R. § 103.5(a)(1)(i).

Nebraska Service Center denied the petition January 17, 2020. We dismissed the Petitioner's appeal from that decision on December 30, 2020. The Applicant filed a combined motion to reopen and reconsider on March 26, 2021. We dismissed that motion as untimely filed on July 21, 2021, stating:

You must file a motion on an unfavorable decision within 33 calendar days of the date we mailed the decision. 8 C.F.R. § 103.5(a)(1), 103.8(b). As well, on March 23, 2020, USCIS issued Leadership Guidance providing flexibility allowing up to 63 days from the date of the decision from the submission of a Form I-290B. On December 30, 2020, we mailed the unfavorable decision to you. Your Form I-290B was received at the designated filing location on March 26, 2021, which is 86 days after the decision.

On motion, the Petitioner states:

We filed the I-290B timely, on or about January 20, 2021 with a filing fee of \$700. We had received a notice from USCIS announcing effective October 2, 2020 USCIS' filing fees were updated. Therefore, we submitted a check in the amount of \$700 as the new filing fee.

USCIS failed to send us a receipt notice or cash our check. . . .

On or about March 25, 2021 USCIS returned our I-290B with a Rejection Notice stating the case was rejected due to incorrect filing fees. After much research I found the following information:

***On September 29, 2020, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction and stay on implementation of the 2020 final USCIS fee rule[.]***

Therefore, USCIS knew prior to announcing the fee increase effective October 2, 2020 that the [ ] court had already filed an injunction against this [increase].

The Petitioner, which bears the burden of proof, does not submit a copy of the claimed March 2021 rejection notice, or any evidence that it attempted to file a timely motion in January 2021. The Petitioner's untimely motion in March 2021 did not include any mention or evidence of a prior attempt to file a timely motion.

The record does not show that USCIS provided inaccurate fee information that prevented the Petitioner from filing a timely appeal with the proper fee. While the proposed fee increase would have been *effective* on October 2, 2020, USCIS did not *announce* the fee increase in October. Rather, the fee increase was published in the Federal Register in early August 2020, two months before it would have

taken effect.<sup>1</sup> The Petitioner does not submit any evidence that USCIS continued to publicize the proposed fee increase after the injunction was issued in late September.

The cover page to our December 2020 dismissal notice advised the Petitioner of its right to file motions, and provided information about the procedure for doing so. We advised: “The Form I-290B website ([www.uscis.gov/i-290b](https://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements.” Because the fee increase was enjoined before its effective date, that website was never updated to reflect the higher fee. The website showed the correct filing fee (\$675) in January 2021, during the time window for filing a timely motion.<sup>2</sup>

Our December 2020 dismissal notice told the Petitioner where to get timely and accurate information about how to file a motion, including the correct amount of the filing fee. Therefore, if the Petitioner did, as claimed, attempt to file a motion in January 2021, any delay resulting from submission of an incorrect fee was neither reasonable nor beyond the Petitioner’s control.

The Petitioner’s latest filing includes no new evidence. The Petitioner submits copies of the same exhibits submitted in support of the untimely motion. This evidence concerns the Petitioner’s business activities, rather than the timeliness of the prior motion or any USCIS communications that would have caused the Petitioner to submit the wrong filing fee. Therefore, the Petitioner’s latest filing does not meet the requirements of a motion to reopen.

The Petitioner has not identified any error of law or policy in our July 2021 decision, or otherwise shown that the decision was incorrect based on the record at the time. Therefore, the Petitioner’s latest filing does not meet the requirements of a motion to reconsider.

Because the Petitioner’s filing does not meet the requirements of a motion to reopen or a motion to reconsider, we must dismiss the motion under 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

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<sup>1</sup> See 85 Fed. Reg. 46788 (Aug. 3, 2020).

<sup>2</sup> See archived copies of the web page from December 18, 2020, at <https://web.archive.org/web/20201218083452/https://www.uscis.gov/i-290b>, and January 23, 2021, at <https://web.archive.org/web/20210123211129/https://www.uscis.gov/i-290b>.