



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

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

In Re: 22669330

Date: NOV. 28, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a management consulting services company, seeks to permanently employ the Beneficiary as its general manager in the United States 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).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial capacity and that the Beneficiary was employed abroad in a managerial capacity. The Petitioner subsequently filed a motion to reopen. The Director dismissed the motion and left the previous denial undisturbed. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish the Beneficiary's eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision on motion and remand for further review of the record and a new decision.

I. LAW

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

Preliminarily, we note that while the Petitioner's appellate brief primarily addresses the Director's initial denial decision, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director's subsequent finding that its motion to reopen did not meet applicable requirements. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. Rather, the only issue before us is whether the Director properly found that the Petitioner's motion did not meet applicable requirements of a motion to reopen.

The Director dismissed the Petitioner's motion, stating that "[t]he evidence submitted with the motion to reopen and reconsider¹ does not establish that the requirements for a motion to reopen have been met."

On appeal, the Petitioner points out that although it submitted "extensive additional, material documentary evidence and the Beneficiary's affidavit which explained in detail how the Petitioner as a business enterprise has evolved and the natural progression of the Beneficiary's role as the visionary and driver of the business," the Director did not address any arguments or evidence it presented on motion. The Petitioner argues that the evidence submitted in support of its motion provided new facts relevant to the Petitioner's business model as well as details regarding the Beneficiary's managerial role, the Petitioner's operating structure and staffing, and the overall nature of the business it conducted since inception. The Petitioner also notes that the Director stated that "[a] motion . . . must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings," but failed to acknowledge the Petitioner's affirmation in the opening paragraph of its motion that the unfavorable decision was not and is not currently the subject of any judicial proceedings. The Petitioner concludes by asserting that "it is fundamentally unjust and putative to deprive the Petitioner of the opportunity to fully review the record submitted in support of the I-140."

Upon review, we agree that the Director did not provide any analysis or address the Petitioner's arguments or evidence on motion. The Director's decision dismissing the motion does not reflect acknowledgement or consideration of the Petitioner's new evidence or the Beneficiary's affidavit, nor does it explain why the submitted evidence does not satisfy the requirements of a motion to reopen. When denying a motion, the Director must fully explain the reasons in order to allow the Petitioner a fair opportunity to contest the decision and provide an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

Because the Director has not yet addressed the merits of the Petitioner's motion to reopen, the record of proceeding is not ripe for us to consider the Petitioner's arguments in that motion. The Director must at least address the Petitioner's claims, legal arguments, and any new facts, and explain why they are insufficient to overcome the denial of the petition.

III. CONCLUSION

As the Director's decision did not adequately address the merits of the Petitioner's motion to reopen, we will remand the matter for entry of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ The Petitioner did not file a motion to reconsider.