



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

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

In Re: 24227594

Date: FEB. 14, 2023

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a construction services provider, seeks to temporarily employ the Beneficiary as an asphalt paver operator under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with “specialized knowledge” to work temporarily in the United States.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad in a position that is managerial, executive, or involved specialized knowledge, and that he would be employed in the United States in a specialized knowledge capacity. The Director dismissed the Petitioner’s subsequent combined motion to reopen and motion to reconsider, determining that it did not meet the requirements of a motion at 8 C.F.R. § 103.5(a)(2) or (3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director’s decision dated June 2, 2022, and remand the matter for entry of a new decision on the Petitioner’s combined motions, consistent with the following analysis.

Our review on appeal is generally limited to the basis for the immediate prior decision. Although the Petitioner’s appellate brief primarily addresses the Director’s initial denial decision dated March 25, 2021, the merits of that decision, and of the underlying petition, are not before us. Rather, the only issue before us on appeal is whether the Director properly concluded that the Petitioner’s motion filing did not meet applicable requirements of a motion to reopen or a motion to reconsider.

A motion to reopen must state the new facts to be provided 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 (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

In dismissing the motions, the Director acknowledged that the Petitioner filed a combined motion and cited the regulatory requirements applicable to both motions to reopen and motions to reconsider. The Director also observed that the Petitioner submitted a brief addressing the reasons it believed the petition was erroneously denied, as well as new evidence in support of its claim that the Beneficiary was employed abroad, and would be employed in the United States, in a capacity involving specialized knowledge. However, the Director did not address the legal arguments the Petitioner made in its brief or discuss the merits of the new evidence provided on motion. Rather, the Director summarily concluded that “[t]he evidence submitted with the motion to reopen and reconsider does not establish that the requirements for filing a motion to reopen have been met.”

The Director’s decision did not sufficiently address the newly submitted facts or evidence or explain why the requirements for a motion to reopen were not met. The Petitioner’s new evidence on motion included detailed explanations of the nature of the hydraulic asphalt engineering services the Petitioner provides, the specialized training and projects the Beneficiary completed, and other information intended to clarify why the offered position involves specialized knowledge not commonly found in the construction industry at large. The new evidence was relevant and directly addressed concerns raised in the Director’s denial decision. Because the Director did not address the merits of the new evidence, we conclude that the Director did not properly adjudicate the motion to reopen.

With respect to the motion to reconsider, the Petitioner’s brief stated several reasons for reconsideration, noting that the Director mischaracterized the nature and complexity of the services to be provided, overlooked a 70-page document that explains the hydraulic engineering process that forms the basis of the Beneficiary’s specialized knowledge, and failed to apply USCIS policy guidance applicable to the adjudication of L-1B nonimmigrant petitions. The decision does not address these arguments. As noted, the Director’s decision, despite acknowledging that the Petitioner filed combined motions to reopen and reconsider, simply states that the Petitioner did not establish “that the requirements of a motion to reopen have been met.” The Director did not appear to reach any conclusion with respect to the motion to reconsider.

An officer must fully explain the reasons for denial in order to allow the petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, because the Director has not yet addressed the merits of the Petitioner’s motion to reopen or motion to reconsider, the record of proceeding is not ripe for us to consider the Petitioner’s arguments. We will therefore withdraw the Director’s decision and remand the matter to the Director. On remand, the Director is instructed to address the merits of the Petitioner’s claims, legal arguments, and the new facts and evidence submitted on motion, and to issue a new decision.

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