



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

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

In Re: 23888424

Date: JAN. 23, 2023

Motion on Administrative Appeal Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a commercial and residential maintenance and cleaning company, seeks to continue the Beneficiary's temporary employment as "CEO/President" under the L-1A nonimmigrant classification for intracompany transferees.¹ See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director noted that in response to a request for evidence, the Petitioner did not elaborate on the Beneficiary's job duties and instead resubmitted the original job description. The Director also determined that the Beneficiary would not primarily perform duties that are managerial or executive nature because the Petitioner did not demonstrate that it had sufficient staffing at the time of filing to relieve the Beneficiary from having to primarily perform operational duties. In addition, the Director observed that although the Petitioner claimed the Beneficiary would manage an essential function, it did not identify that function. The Petitioner subsequently filed a motion to reconsider, which the Director dismissed.² The Petitioner appealed the unfavorable decision, and we summarily dismissed the appeal. 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 to reopen.

¹ The Petitioner previously filed a "new office" petition on the Beneficiary's behalf. That petition was approved for the one-year period from July 30, 2019, until July 29, 2020. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

² A motion to reconsider must state the reasons for reconsideration, be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

I. MOTION TO REOPEN

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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the Petitioner has shown “proper cause” for that action. Thus, to merit reopening, a petitioner must meet the formal filing requirements, such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee, and 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).

II. ANALYSIS

The issue at hand is whether the Petitioner has offered new facts supported by affidavits or other evidence to warrant reopening this matter for a new decision regarding our summary dismissal of the Petitioner’s appeal.

In support of this motion, the Petitioner has provided a brief statement referring to “the attached brief” it claims was submitted as evidence in support of the appeal; the Petitioner asserts that this brief was timely sent and timely received.³ The record does not support this claim. Rather, the record shows that the Petitioner’s motion to reconsider, which was before the Director, was submitted with a supporting document titled “Brief in Support of Motion to Reconsider.” However, there is no evidence that a brief was submitted in support of the appeal that stemmed from the Director’s dismissal of the motion, which was based on the determination that the Petitioner did not “establish that the instant petition’s adverse decision was based on an incorrect application of law or policy . . . based on the evidence of record at the time of the decision.”⁴

The Petitioner’s latest filing is a motion to reopen, which pertains to our dismissal of the appeal, filed to dispute the Director’s dismissal of the Petitioner’s motion to reconsider. We summarily dismissed the appeal because we determined that the Petitioner neither specifically identified a factual or legal error in the Director’s unfavorable decision, nor submitted a brief or evidence in support of the appeal, despite marking the Form I-290B to show its intent to submit a brief and/or additional evidence within 30 calendar days of filing the appeal. To warrant reopening of this matter, the Petitioner must offer new facts supported by affidavits or other evidence specifically addressing the adverse decision that immediately preceded this motion. Because the current motion to reopen does not state new facts

³ The Petitioner also submitted a Form I-797C, Notice of Action, issued in June 2022, stating that the Form I-290B, Notice of Appeal or Motion (with receipt number [REDACTED]) was being rejected based on the submission of an incorrect or insufficient fee. Although the Petitioner argues that this notice is erroneous and that a correct fee was submitted, the record shows no filing that corresponds to the receipt number listed in the June 2022 notice. Furthermore, the record shows that we issued a decision regarding the Petitioner’s appeal (with receipt number [REDACTED]), thus indicating that the June 2022 notice is not relevant in the matter at hand and requires no further action at this time.

⁴ The Petitioner also states that it referenced “an incorrect receipt number in the cover letter for the [motion] filing.” However, there is no evidence that an incorrect receipt number was referenced or that such an error resulted in, or contributed to, the Director’s unfavorable decision on the Petitioner’s motion. In fact, the Director acknowledged that the Petitioner submitted a brief in support of the motion to reconsider but made no reference to any confusion regarding an incorrect receipt number.

supported by documentary evidence, we conclude that the Petitioner has not shown proper cause for reopening our prior decision.

ORDER: The motion to open is dismissed.