



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

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

In Re: 19992685

Date: MAR. 7, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, which seeks to operate a gas station and convenience store, seeks to temporarily employ the Beneficiary as general manager of its new office¹ under the L-1A nonimmigrant classification for intracompany transferees. 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 that the record did not establish, as required, that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; and (3) the new office will support a managerial or executive position within one year. We dismissed the Petitioner's appeal, and dismissed a subsequently filed motion to reopen and motion to reconsider based on the finding that the motion was untimely filed.

The matter is now before us on a second motion to reopen and motion to reconsider. In support of the current motion, the Petitioner contends that it provided what it believed to be the correct filing fee with its original filing of the prior motion, and as such, the prior motion should have been accepted as timely filed.

Upon review, we will dismiss the motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our 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).

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.

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).

Further, we note that our decision here is not a new adjudication of the underlying petition, based on review of the complete record. Rather, our review is limited to specific errors that the Petitioner identifies on motion with respect to the preceding decision. As such, our objective in this matter is to determine whether we correctly concluded that the Petitioner did not timely file a combined motion to reopen and reconsider in response to a decision that we issued on October 16, 2020.

II. ANALYSIS

The applicable regulations state that a motion on an unfavorable decision must be filed within 33 days of the date U.S. Citizenship and Immigration Services (USCIS) mails the decision. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). During the coronavirus (COVID-19) pandemic, USCIS issued guidance that Form I-290B, Notice of Appeal or Motion, would be accepted if filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021. No exceptions to this filing requirement exist for motions to reconsider. However, an untimely filed motion to reopen may be excused in USCIS’ discretion if the record demonstrates that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

A. Relevant Facts and Procedural History

The record contains a copy of Form I-797C, Notice of Action, notifying the Petitioner that despite USCIS’s receipt of its combined motion on December 14, 2020, the motion was rejected because it was not accompanied by the appropriate filing fee. Although the Petitioner resubmitted the motion with the correct filing fee, these items were not received until February 8, 2021, 115 days after our unfavorable decision was issued. We therefore dismissed the combined motion, concluding that it was not received with the proper filing fee within 63 days of our October 2020 decision.

The Petitioner contends that the initial combined motion was erroneously rejected based on discrepancies regarding the required filing fee. Specifically, the Petitioner asserts that “USCIS sent a notice stating the filing fees increased” on October 2, 2020, and “USCIS failed to send any notice that this fee increase was later denied by a preliminary injunction halting implementation of USCIS’ fee rule.” The Petitioner asserts that its prior combined motion, initially filed within the 63-day period and accompanied by a filing fee of \$700, should have been considered timely filed.

The Petitioner appears to reference a USCIS policy alert, issued on September 2, 2020, revising its policy guidance in the USCIS Policy Manual to align with the *Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements Final Rule*, published in the Federal Register on August 3, 2020, and which was due to take effect on October 2, 2020. *See* USCIS Policy Alert PA-2020-13, *Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements Final Rule* (Sept. 2, 2020), <https://www.uscis.gov/sites/default/files/document/policy-manual->

updates/20200902-FeeRule.pdf. The rule proposed several fee increases, including an increase in the Form I-290B filing fee, from \$675 to \$700.

On September 29, 2020, the U.S. District Court for the Northern District of California, in *Immigration Legal Resource Center et al., v. Wolf, et al.*, 20-cv-05883-JWS, preliminarily enjoined the Department of Homeland Security from implementing or enforcing any part of the USCIS *Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements* rule, and an alert notifying the public regarding the rule's preliminary enjoinder was appended to the policy alert. See USCIS Policy Alert PA-2020-13, *supra* at 1. The update to the policy alert, posted on the USCIS website, stated that while the rule is preliminarily enjoined, USCIS would use the regulations and guidance currently in place to adjudicate applications and petitions, and would continue to accept USCIS forms with the current editions and fees.

B. Motion to Reopen

In support of its motion to reopen, the Petitioner submits a copy of check number 1277 in the amount of \$700 and dated December 3, 2020, and claims that this fee accompanied the prior combined motion. The Petitioner asserts that because the initial motion submission was accompanied by a filing fee and received by USCIS within the permitted 63-day period, it was timely filed and the rejection of the initial submission was erroneous. While the Petitioner's explanation is acknowledged, we note that a form is properly filed when USCIS receives it at the location designated for filing the form, and *it must be accompanied by the correct filing fees*. See 8 C.F.R. § 103.2(a)(1), (7)(ii)(emphasis added). USCIS rejects benefit requests that do not meet these minimum requirements, and submitting an incorrect fee, including missing fees or fees in the wrong amount, are reasons for rejection. See 1 *USCIS Policy Manual* B.6(B), <https://www.uscis.gov/policymanual>.

The Petitioner argues that USCIS guidance was unclear with regard to the required filing fee, and resulted in the erroneous rejection of its motion and its subsequent dismissal. We disagree. Our adverse decision, issued on October 16, 2020, included the following instruction: "The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements." Moreover, USCIS updated its website and policy alert to reflect that the fee rule was preliminarily enjoined as of September 29, 2020, and that USCIS would continue to accept current forms and fees. Although the Petitioner argues that "USCIS failed to send any notice that this fee increase was later denied by a preliminary injunction halting implementation of USCIS' fee rule," information regarding the applicable filing fees, and current status of the fee rule, was readily available on the USCIS website. Accordingly, the Petitioner has not shown that the delay in filing the prior motion to reopen was reasonable and beyond its control, such that the untimely filing should be excused in USCIS' discretion.

C. Motion to Reconsider

A motion to reconsider must show that the disputed decision was based on an incorrect application of law or policy.

Here, the Petitioner asserts that it erroneously relied on guidance issued by USCIS regarding a fee increase associated with its motion, asserting that on October 2, 2020, "USCIS sent a notice stating

the filing fees increased.” However, the Petitioner does not offer sufficient corroborating evidence to support the assertion that USCIS sent such a notice to the Petitioner as claimed. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Moreover, our adverse decision was issued subsequent to the rule’s preliminary injunction. Contrary to the Petitioner’s assertions, notice of the rule’s injunction was published to the USCIS website, along with notice that USCIS would continue to accept USCIS forms with the current editions and current fees. Further, our adverse decision instructed the Petitioner that it should refer to the Form I-290B website (www.uscis.gov/i-290b) for the most current information on fee, filing location, and other requirements if it wished to file a motion to reopen or motion to reconsider.

The Petitioner’s misinterpretation of USCIS policy guidance does not show that our February 2021 decision rejecting the prior motion as untimely was based on an incorrect application of law or policy, and therefore the Petitioner’s error is not good cause for reconsideration. The Petitioner, in its latest motion, has not shown that the prior motion was timely filed in accordance with the form instructions. Therefore, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner has not submitted new evidence to show that the delay in filing the prior motion to reopen was reasonable and beyond its control, such that the untimely filing should be excused in USCIS’ discretion. Moreover, the Petitioner has not demonstrated any error of law or policy in our decision dismissing its prior motion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.