



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

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

In Re: 17758490

Date: JUNE 29, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner describes itself as a provider of lab testing services. It seeks to permanently employ the Beneficiary as its chief executive officer and president under the first preference immigrant classification for multinational executives or managers. *See* 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 Petitioner did not establish, as required, that: (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary was employed abroad in a managerial or executive capacity, (3) the Petitioner was doing business as defined by the regulations, (4) the Petitioner had the ability to pay the Beneficiary's proffered wage, and (5) the foreign employer was doing business. We affirmed the Director's adverse decision and dismissed the appeal, noting that the Petitioner specifically addressed only one of the five grounds denial and thereby abandoned any challenge of the four remaining grounds, each of which was independently dispositive of the appeal. In addition, we affirmed the Director's determination that the Petitioner did not establish that it had the ability to pay the Beneficiary's proffered wage. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the Petitioner's motions.

I. MOTION REQUIREMENTS

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). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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 the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The issue to be addressed in this decision is whether the Petitioner has offered new relevant facts supported by credible evidence or made arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy with respect to the facts of this case. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing (in this case, November 2016) and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. As such, we will examine any new facts and supporting evidence that pertain to the dismissal of the appeal and we will consider arguments establishing that our decision was based on a misapplication of law or USCIS policy.

A. Motion to Reopen

As noted above, 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).

In the matter at hand, the Petitioner resubmits its appeal brief along with its 2016 and 2017 tax returns, its prior approval notice showing the Beneficiary’s authorized period of employment from August 2015 through June 2018, and wage and tax statements the Petitioner issued to the Beneficiary in 2016 and 2017. Because these documents had been previously submitted, they offer no new facts pertaining either to our analysis of the Petitioner’s continued ability to pay or to our conclusion that the Petitioner abandoned four out of five issues that served as grounds for the Director’s denial. We further note that our adverse conclusion regarding the Petitioner’s ability to pay pertained specifically to 2018. To the extent that the resubmitted wage and tax documents pertain to 2016 and 2017, years during which the Petitioner’s ability to pay was not in question, these documents are neither new nor are they relevant to the issue in contention.

In light of the above, the Petitioner has not met the requirements of a motion to reopen and the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

A motion to reconsider must 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 USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also

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). As discussed below, this motion does not meet these requirements.

As discussed above, in our prior decision dismissing the appeal, we determined that the Petitioner focused on only one of the five grounds that served as bases for the denial and neglected to address the other four grounds. We pointed out that when an appellant fails to properly challenge one of the independent grounds upon which the Director based the overall determination, the filing party has abandoned any challenge of that ground. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014); *United States v. Cooper*, No. 17-11548, 2019 WL 2414405, at *3 (11th Cir. June 10, 2019); *McCray v. Fed. Home Loan Mortg. Corp.*, 839 F.3d 354, 361-62 (4th Cir. 2016); *In re Under Seal*, 749 F.3d 276, 293 (4th Cir. 2014) (finding “an appellant must convince us that every stated ground for the judgment against him is incorrect.”); *United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005). We concluded that the Petitioner’s failure to address four of the grounds in the denial resulted in its abandonment of those grounds, thereby precluding the Petitioner from being able to prevail on appeal. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, we affirmed the Director’s adverse determination.

On motion, the Petitioner argues that it provided “additional evidence” regarding “all grounds” and disputes our determination that the Petitioner addressed only one of the five denial grounds on appeal. The Petitioner provides a copy of the appeal brief in support of its argument. However, the legal brief was reviewed and fully considered when it was originally before us on appeal. As we previously determined, the only issue the Petitioner fully addressed on appeal was that of the Beneficiary’s proposed U.S. employment. The Petitioner does not identify specific arguments it claims it made or specific evidence it claims to have submitted to address four of the previously listed grounds for denial. As explained in our prior decision, even if the Petitioner had provided sufficient evidence to overcome the Director’s conclusion with respect to one of the denial grounds, the petition would not have merited approval because of the Petitioner’s failure to overcome, or even to address, the other four grounds. In light of this considerable deficiency, which precluded a favorable decision, we declined to address the Petitioner’s appellate arguments regarding the claim that the Beneficiary’s U.S. employment would be in a managerial or executive capacity.

We also determined that aside from failing to challenge most of the Director’s bases for denial, the Petitioner did not provide sufficient evidence establishing that it met the criteria listed in the regulation at 8 C.F.R. § 204.5(g)(2), which states, in part, that “the petitioner must demonstrate this ability [to pay] at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence.” We then provided the Petitioner with a comprehensive analysis of the evidence and explained how it fell short of meeting the regulatory requirement.

On motion, the Petitioner argues that we “cherry-picked this ground,” thereby resulting in an erroneous conclusion. We disagree and note that the primary basis for dismissing the appeal was that the Petitioner failed to address four of the five issues that the Director cited as grounds for the denial. In other words, that deficiency alone was sufficient to support our adverse decision. That said, the Petitioner has not established that our determination regarding its ability to pay was based on an “an erroneous finding of fact and conclusion of law,” as claimed. Although the Petitioner explains why

the Beneficiary's wages in 2018 were prorated, pointing out that the Beneficiary's period of authorized employment expired in June 2018, it does not cite any pertinent precedent decisions to establish that our analysis of the Petitioner's 2018 tax return was incorrect. Further, as discussed in our analysis of the Petitioner's motion to reopen, the Petitioner has not offered new evidence to establish that it had the ability to pay the Beneficiary's proffered wage during the time period in question. Instead, the Petitioner resubmitted evidence of its ability to pay the Beneficiary's wages in 2016 and 2017, an issue that was not contested and therefore was not included as a basis for dismissing the appeal.

In sum, we provided a comprehensive analysis of the Petitioner's submissions and explained precisely how we reached an adverse conclusion. On motion, the Petitioner does not explain how our decision was incorrect, nor does it establish that we misapplied the law or USCIS policy in reaching that decision. As a result, the filing does not meet the requirements of a motion to reconsider and must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the basis for dismissal of the appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.