



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

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

In Re: 20684241

Date: AUG. 18, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, a provider of financial consulting services, seeks to employ the Beneficiary as an accountant. The company requests his classification under the third-preference, immigrant visa category for professionals. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval, concluding that the Petitioner and Beneficiary concealed family relationships between the Beneficiary and the company's principals and that the Petitioner failed to demonstrate the availability of the offered position to U.S. workers. The Director also dismissed the following motion to reopen, concluding that the Petitioner did not demonstrate that its delay in filing the motion was reasonable and beyond its control. We dismissed the subsequent appeal, and the Petitioner now submits combined motions to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss both appeals.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

As noted above, the Director revoked his previous approval of this petition. In our decision on appeal, we concluded that USCIS provided adequate notification of that revocation, and that the Petitioner had not demonstrated that its delay in filing a motion to reopen that revocation decision, filed more than 15 months later, was reasonable and beyond its control.

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a “new fact” to have been previously unavailable or undiscoverable. Instead, “new facts” are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.” Here, the Petitioner submits a signed statement from its member which goes into further detail about the timeline of its relocation and efforts to have its mail forwarded through the United States Postal Service. However, this new information is not material to the issue of whether USCIS provided adequate notice of the revocation to the Petitioner. As noted in one of the USCIS webpage printouts submitted with the motion, changing an address with the U.S. Postal Service will not change the address with USCIS.

The statement also reiterates arguments made in its appeal that the Petitioner’s delay in filing its initial motion to reopen were reasonable since it filed the motion as soon as it learned of the revocation. As these claims have already been presented, we find that the Petitioner’s motion to reopen does not state new facts, and therefore fails to meet the requirements at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion is dismissed.

B. Motion to Reconsider

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). On motion, the Petitioner asserts that the resources about updating addresses that we referred to in our last decision are ambiguous as to whether they also apply to instances where a petition or application has already been approved, and that it was therefore unaware of any requirement and not obligated to provide a new address after approval of this petition.

We first note that although one of the copies of USCIS webpages submitted by the Petitioner refers only to pending cases, two others refer to both pending cases and to changes in address in general, noting instances in which an updated address is needed even after approval. In addition, a visit to the

website's "How Do I Guides" page at www.uscis.gov/tools/how-do-i-guides includes a link to a page entitled "After Receiving a Decision," <https://www.uscis.gov/green-card/after-receiving-a-decision>, which states that "If you have moved since your case was approved, change your address online or call the USCIS Contact Center." And as stated in our previous decision, all of these resources stress the importance of updating addresses, with the DHS Ombudsman website stressing that "It is the sole responsibility of the applicant/petitioner to ensure USCIS has the correct address information on file." After review of these public guidelines, we conclude that the Petitioner has not shown that our previous decision that the untimely filing of its initial motion to reopen was not reasonable or beyond its control was incorrect. 8 C.F.R. § 103.5(a)(1).

The Petitioner also asserts that because it acted to change its address and file its motion upon learning of the revocation through correspondence related to a nonimmigrant petition filed on the Beneficiary's behalf, we should take this into consideration and consider the initial motion to reopen to have been timely filed. It refers to a decision of the Board of Immigration Appeals ("the Board") regarding in absentia orders of removal, which lists factors to be considered in overcoming a presumption of delivery of those notices. *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). However, the Petitioner has not established that the standard used and factors considered by the Board when reviewing motions to reopen in absentia removal orders should be applied in this matter. As noted above and in our previous decision, the regulation at 8 C.F.R. § 103.5(a)(1) states that USCIS has discretion to excuse the untimely filing of a motion to reopen where a petitioner demonstrates "that the delay was reasonable and beyond [its] control." It does not require, as the Petitioner suggests, that USCIS consider whether the Petitioner would have timely a filed motion to reopen the revocation of its petition if it would have received the notice.

Finally, the Petitioner argues that since USCIS is one agency, it was reasonable for the Petitioner to believe that the new address it used in its nonimmigrant visa petitions would be shared and applied to its immigrant visa petition as well. But as explained in our previous decision, each benefit request creates its own, separate record of proceeding, and officers are expected to consider that record only when adjudicating a petition or application. *See 1 USCIS Policy Manual E.2*. As noted above, USCIS public guidance states that it is the Petitioner's responsibility to update its address with USCIS.

The Petitioner has not established that our most recent decision was based upon an incorrect application of law or policy, or that it was incorrect based upon the record at the time the decision was made. As such, we will dismiss the motion to reconsider

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.