



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

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

MATTER OF C-, INC.

DATE: SEPT. 13, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an exporter of weather instruments, seeks to permanently employ the Beneficiary as its general manager 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, Texas Service Center, denied the petition, concluding that the evidence of record did not establish that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the Beneficiary will be employed in the United States in a managerial or executive capacity. We dismissed the Petitioner's appeal of that decision. The Petitioner then filed a motion to reconsider, which we denied.

The matter is now before us on a motion to reopen. On motion, the Petitioner submits additional evidence relating to the Petitioner's business and the Beneficiary's role at the company.

We will deny the motion.

I. MOTION REQUIREMENTS

A. Overarching Requirements for a Motion

The regulations limit our authority to reopen the proceeding to instances where the Petitioner has shown "proper cause" for that action.¹ Thus, to merit reopening, not only must the submission meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also the Petitioner must show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements.²

¹ *See* 8 C.F.R. § 103.5(a)(1)(i).

² *See* 8 C.F.R. § 103.5(a)(4).

B. Requirements for Motions to Reopen and Motions to Reconsider

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.³ 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 U.S. Citizenship and Immigration Services policy. A motion to reconsider must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.⁴

II. DISCUSSION

Upon review, and for the reasons discussed below, we will deny the motion to reopen.

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on August 5, 2013. The Director denied the petition on February 13, 2015, concluding that the Petitioner did not establish that the Beneficiary was employed abroad, and would be employed in the United States, in a managerial or executive capacity. We dismissed the appeal on October 19, 2015, based on several findings:

- The Petitioner established that the Beneficiary held titles of authority abroad and at the petitioning company, but did not provide enough details to show that the Beneficiary's activities would be *primarily* managerial or executive.
- The Petitioner claimed to be "a complex business with numerous highly specialized organizational departments," but the Petitioner did not document this claimed complex structure. The Petitioner had only four employees at the time of filing, and did not show that these subordinate employees relieved the Beneficiary from primarily performing non-qualifying operational or administrative duties.
- The Petitioner did not submit evidence to support its claim that "the corporation uses independent contractors to perform all its necessary functions," such as "customs brokering, freight forwarding, etc."
- The Petitioner submitted conflicting job descriptions, for the Beneficiary's foreign position and the positions of some of the Beneficiary's subordinates in the United States.

Further details are in the dismissal notice.

When we issued the dismissal notice, the Petitioner had the option to file a motion to reopen (based on new evidence); a motion to reconsider (based on legal arguments); or a combined motion to reopen and motion to reconsider. The Petitioner filed a timely motion to reconsider and submitted no evidence. We denied that motion, for reasons explained in our decision dated May 2, 2016.

³ 8 C.F.R. § 103.5(a)(2).

⁴ 8 C.F.R. § 103.5(a)(3).

(b)(6)

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A petitioner must file a motion to reopen within 30 days of the decision that the motion seeks to reopen. The regulations give us the discretion to allow a later motion, but only when the petitioner has demonstrated that the delay was reasonable and beyond the petitioner's control.⁵

We received the Petitioner's latest filing on June 1, 2016. This filing is timely only in relation to our denial of the Petitioner's motion to reconsider on May 2, 2016. The new filing, however, does not seek to reopen that decision. Instead, the Petitioner seeks to reopen our dismissal notice from October 19, 2015, by submitting evidence intended to address deficiencies that we identified in that decision. For example, the Petitioner submits additional information about the Beneficiary's duties; the duties of his subordinates; and the Petitioner's use of contract labor.

The Petitioner has not shown that the delay in submitting this new evidence was reasonable and beyond the Petitioner's control. By first filing a motion to reconsider, the Petitioner did not preserve the right to delay submitting new information until after we had adjudicated the motion to reconsider. Our denial of the motion to reconsider did not reset the clock for timely filing of a motion to reopen our prior dismissal decision. The Petitioner does not claim or demonstrate that the evidence submitted with the latest motion was not available for submission at an earlier time.

For the reasons discussed above, the Petitioner did not file a timely motion to reopen our dismissal decision of October 19, 2015, and the Petitioner has not shown that the delay in filing the motion (and submitting the accompanying evidence) was reasonable and beyond the Petitioner's control.

Furthermore, the evidence submitted on motion would not have established eligibility, even if the motion had been timely filed.

One basis for dismissal of the Petitioner's appeal concerned the Petitioner's descriptions of the Beneficiary's position. The descriptions conflicted with one another and lacked important details. On motion, the Petitioner submits a new job descriptions signed by [REDACTED] identified as general manager of the Petitioner's foreign parent company,⁶ although the descriptions are on the U.S. Petitioner's letterhead. The new descriptions do not reconcile the Petitioner's previous submission of conflicting descriptions. Part of one description repeatedly refers to the male Beneficiary with the feminine pronoun "she," and refers to a "marketing and distribution manager" who is not shown on the Petitioner's organizational chart.

A new sample daily schedule raises additional questions, as it purports to show the Beneficiary's activities from 8:00 a.m. to 11:10 a.m., then returns to 9:55 a.m. and runs through 5:00 p.m. The schedule shows different activities during the overlapping 75 minutes between 9:55 and 11:10. It shows the Beneficiary attending two short meetings (in different offices) and making several telephone calls between 10:00 and 10:30, but it also shows him attending a single meeting without interruption from 9:58 to 10:35.

⁵ See 8 C.F.R. § 103.5(a)(1)(i).

⁶ [REDACTED] based in [REDACTED] Columbia.

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Most of the materials submitted on motion, such as invoices, tax returns, and bank statements, establish that the Petitioner and the foreign company are actively doing business, but they do not address the issues we raised in the dismissal notice.

The motion does not include contemporaneous evidence that the Petitioner relied on contractors (other than an accountant) when it filed the petition in 2013. Instead, the Petitioner submits letters from officials of [REDACTED] and [REDACTED] both at the same [REDACTED] address, asserting that both companies have provided freight forwarding activities for the Petitioner for several years.⁷ The president of [REDACTED] stated: “we attached some of our invoices billed as a record of our services and as a proof of our commercial relationship,” but none of the invoices submitted with the motion are from that company.

The Petitioner submits a copy of a lease agreement between the Petitioner and [REDACTED] [REDACTED] for a property in [REDACTED] Florida. The lease does not indicate that the lessor would provide freight forwarding services. Instead, the document shows only that the Petitioner leased 600 square feet of warehouse space. The documents submitted on motion do not show that contract labor (other than an accountant) relieved the Beneficiary from performing non-qualifying operational and/or administrative tasks.

For the reasons discussed above, the motion would not have overcome the dismissal of the appeal, even if the Petitioner had timely filed it after we issued our dismissal order.

III. CONCLUSION

The motion will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner.⁸ Here, that burden has not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of C-, Inc.*, ID# 10768 (AAO Sept. 13, 2016)

⁷ There is no record of a company called [REDACTED] but there is a [REDACTED] [REDACTED] at the same address as [REDACTED] Source: [http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults?inquiryType=EntityName&searchNameOrder=\[REDACTED\]](http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults?inquiryType=EntityName&searchNameOrder=[REDACTED]) (printout added to record August 24, 2016).

⁸ Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013).