



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

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

In Re: 12687735

Date: DEC. 21, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a medical device manufacturer, seeks to permanently employ the Beneficiary as its chief operating officer (COO) in the United States under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. The Petitioner filed a subsequent motion to reopen and a motion to reconsider. The Director granted the motion to reopen and affirmed her denial of the petition. The Petitioner later filed an appeal that we dismissed.

The matter is now before us on a motion to reopen and a motion to reconsider. We will grant the motion to reopen and sustain the appeal.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). A motion to reconsider must demonstrate 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. *See* 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

The Director found that the evidence did not establish that the Beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act; 8 U.S.C. § 1101(a)(44).

In denying the petition, the Director emphasized the Petitioner’s staffing levels, noting that its staff of five full-time employees did not appear to be comprised of managers, professionals, or supervisors and did not appear sufficiently relieve the Beneficiary from involvement in a wide range of daily functions associated with running the Petitioner’s business.

In dismissing the appeal, we found that the Director erred in not considering the Beneficiary’s foreign subordinates and operations.¹ However, we concluded that the Petitioner did not submit sufficient supporting evidence to establish that the Beneficiary acts in a managerial capacity, either as a personnel or a function manager.

In its motion to reopen, the Petitioner asserts that, because the Director’s decisions were based on the incorrect legal premise that its foreign subordinates and operations could not be considered, it was not provided notice that other evidence in the record was insufficient to establish that the Beneficiary would be primarily acting in a managerial capacity. Nor was it provided an opportunity to respond to our concerns related to the sufficiency of the evidence, despite our conclusion that the Director’s reliance on only U.S. staffing levels was in error. On motion, the Petitioner submits additional evidence in support of the Beneficiary’s managerial functions within its organization.

The current motion to reopen qualifies for consideration because the Petitioner is providing new facts with supporting documentation not previously submitted. Upon review of the petition and evidence, including the evidence submitted on motion, we find that the Petitioner has overcome the grounds for denial.²

The Petitioner is a U.S. medical device manufacturing company with a subsidiary in [redacted] and a manufacturing facility in [redacted] China. The record substantiates that the Beneficiary’s role as chief operating officer of the U.S. parent company involves oversight of foreign employees who are charged with supporting the company’s operations, including quality management, research and development, and sales.

¹ We may consider employees of the wider multinational organization when assessing a petitioner’s staffing needs and determining whether a beneficiary will be sufficiently relieved from performing operational and administrative duties. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

² Because we grant the Petitioner’s motion to reopen, the motion to reconsider is moot.

The Petitioner explained and documented that the Beneficiary primarily manages the quality management system and international marketing plans and strategies of the organization. The Beneficiary manages the essential function of regulatory compliance through the company's quality management system and supervises the president of sales marketing, the manager of human resources and finance, and research and development managers). The Beneficiary functions at a high level within the organizational hierarchy, second only to the chief executive officer, and with respect to the organization's quality management function. Further, the Petitioner has demonstrated that the Beneficiary exercises discretion over the day-to-day operations of the Petitioner's quality management system.

Taking into account the contributions of the foreign and U.S. staff, we find that the record establishes that the Beneficiary would primarily perform managerial duties and will direct a major component or function of the organization, with limited supervision from the company's chief executive officer.

ORDER: The motion to reopen is granted and the appeal is sustained.