



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

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

In Re: 17680512

Date: MAY 27, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, operating as a childcare center, seeks to permanently employ the Beneficiary as its 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: 1) it had a qualifying relationship with the Beneficiary's former foreign employer; 2) the Beneficiary was employed in a managerial or executive capacity abroad prior to her entry into the United States as a nonimmigrant; 3) the Beneficiary would be employed in a managerial or executive capacity in the United States; and 4) it had the ability to pay the Beneficiary's proffered wage. We dismissed the appeal, concluding that the Petitioner did not demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity, and declined to address the remaining grounds, explaining that the identified basis of ineligibility was dispositive of the appeal. The matter is now before us on a motion to reconsider.

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

### I. MOTION REQUIREMENTS

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 reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit 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

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 consider arguments establishing that our decision was based on a misapplication of law or USCIS policy.

In order to prevail on a motion to reconsider, the Petitioner must state the reasons for reconsideration and cite to pertinent precedent decisions establishing that our prior 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.

In our decision, we concluded that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. First, we noted that the Petitioner did not clearly articulate whether the Beneficiary's foreign employment was claimed to be managerial or executive and instead ambiguously referred to the Beneficiary's position abroad as that of an "Executive/Managerial level employee." We also determined that although the Beneficiary may have exercised discretion over some of the foreign employer's daily operations and possessed some authority with respect to discretionary decision-making, the Petitioner provided a deficient job description and submitted no documentation in support of the claim that the Beneficiary's foreign employment involved primarily managerial or executive job duties. Although we acknowledged several foreign business documents that were in the record, we questioned their probative value given that the Beneficiary was not named in any of the documents and no explanation was provided stating the Beneficiary's involvement in the documented business activities.

We also addressed deficiencies concerning evidence of the foreign entity's staffing, noting that although the Petitioner indicated that the Beneficiary was a personnel manager and had subordinate supervisors, no details were provided about the subordinates' respective duties and the Petitioner did not explain the subordinates' exact roles in the foreign business, a deficiency that was also noted in the Director's decision. In addition, we questioned the overall lack of supporting evidence of the Beneficiary's claimed authority over subordinate personnel, given that she is claimed to have acted in this role for over 13 years.

In sum, we provided a comprehensive analysis of the Petitioner's claims and submissions and described critical evidentiary deficiencies that explained precisely how and why we dismissed the appeal.

On motion, the Petitioner argues that "[s]ize is not a relevant consideration" and that only the Beneficiary's job duties must be considered in assessing the managerial or executive capacity of the Beneficiary's foreign employment. However, the Petitioner does not cite any precedent decisions or USCIS policy in support of this argument, which precludes a holistic approach that involves a totality of the evidence analysis that does not focus exclusively on a beneficiary's job duties, but rather takes

into account the duties alongside other relevant factors, such as the employing entity's organizational structure, the duties of a beneficiary's subordinates, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a company that does not conduct business in a regular and continuous manner. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). That said, anytime staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

Furthermore, the Petitioner's suggestion that we focus exclusively on the Beneficiary's job duties would have been no less detrimental to the outcome in this matter, given that we found the Beneficiary's job description to have been deficient, from its lack of clarity in identifying the foreign employment as managerial or executive to the lack of details about the Beneficiary's specific role in certain documented business transactions, including bid notifications, contracts, award documents, and various work orders.

The Petitioner also points out that the Director listed multiple grounds as bases for the denial and objects to our decision to focus on only one of those grounds as the basis for dismissing the appeal. However, as noted in our prior decision, reserving appellate arguments regarding some of the bases for denial is permitted when we identify one basis as being dispositive of the Petitioner's appeal. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Furthermore, given that the Petitioner has not provided evidence to overcome the sole basis for our decision, the Petitioner has not demonstrated that the outcome in this matter would have been different if we had addressed all four grounds cited in the Director's decision.

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

**ORDER:** The motion to reconsider is dismissed.