



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

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

In Re: 22198326

Date: SEP. 16, 2022

Motion on Administrative Appeals Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner describes itself as a seller of furniture products and 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).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish, as required, that: (1) it had been doing business for more than one year prior to the date the petition was filed; (2) it had the ability to pay the Beneficiary's proffered wage as of the date the petition was filed; (3) the Beneficiary was employed abroad in a managerial or executive capacity; and (4) the Beneficiary would be employed in the United States in a managerial or executive capacity.

The Petitioner later filed a motion to reopen and a motion to reconsider. Although the Director granted the motion, the denial of the petition was affirmed on the same grounds. The Director also determined the Petitioner did not demonstrate that the Beneficiary would be an employee of the Petitioner or that an employer-employee relationship would exist.

The Petitioner then filed an appeal. We dismissed the appeal, concluding the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity, and we declined to address the remaining grounds given that this identified basis of ineligibility was dispositive.¹ The Petitioner later filed a motion to reopen and a motion to reconsider that we dismissed.

¹ The sole issue we will discuss in this decision is the only issue discussed in our prior appeal and motion decisions; namely, whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the other bases of our prior appeal dismissal. *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).

The Petitioner then filed another motion to reconsider that we also dismissed. The matter is now before us again 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). 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).

We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. A motion to reconsider must include an allegation of material factual or legal errors in the prior decision, supported by pertinent authority, and if there has been a change in law, a reference to the relevant statute, regulation, or precedent and an explanation of how the outcome of the decision is materially affected by the change. *Matter of O-S-G*, 24 I&N Dec. 56 (BIA 2006).

II. ANALYSIS

In our prior decisions dismissing the Petitioner's appeal and subsequent motions, we concluded that the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States as of the date the petition was filed. We pointed to various reasons why the submitted evidence was insufficient. For instance, we emphasized material inconsistencies between the Beneficiary's job duty descriptions, documentation on the record reflecting his performance of non-qualifying operational duties, the generic nature of his claimed qualifying duties, the lack of supporting documentation reflecting his performance of qualifying managerial or executive-level duties, and evidence demonstrating that the Petitioner had only two employees when the petition was filed in December 2017.

In support of the prior motion, the Petitioner asserted we erred in dismissing the prior motion to reopen and in not considering 2018 and 2019 tax documentation submitted in support of that motion. The Petitioner asserted it was improper for us to disregard this evidence because it "proved that the Petitioner has sufficient staff to relieve the beneficiary from [*sic*] non-qualifying job duties and to [be] primarily engaged in executive duties." Further, the Petitioner indicated that we erred in concluding that the Beneficiary would not "primarily engage in [an] executive job capacity." The Petitioner stated that the record contained sufficient evidence to establish that the Beneficiary met the regulatory definition of an executive, noting that it "provided detailed descriptions for each position with sufficient detail" as well as other supporting evidence to demonstrate his qualifying tasks. The

Petitioner also points to a submitted organizational chart reflecting the Beneficiary's executive-level position and it contended that it was only required demonstrate that he would primarily perform managerial or executive-level tasks (or as noted, more than 51% qualifying tasks).²

In support of the current motion, the Petitioner reiterates the same contentions submitted in support of its prior motion to reconsider. The Petitioner now provides its 2020 and 2021 tax returns, a 2020 IRS Form W-3 Transmittal of Wage and Tax Statement, 2020 and 2021 IRS Forms W-2 Wage and Tax Statements, and 2021 IRS Forms 941 Employer's Quarterly Tax Returns.

The Petitioner has again not sufficiently articulated how our prior decision to dismiss its previous motion to reconsider was inconsistent with applicable law or USCIS policy. The Petitioner only resubmits assertions we have thoroughly analyzed and discussed in our prior decisions. For instance, the Petitioner again asserts that we erred in not specifically discussing the 2018 and 2019 tax documentation and wage tax forms provided in support of that motion and provides additional tax and wage forms filed after the date the petition was filed from 2020 and 2021.³ As noted in our prior decisions, this evidence is not relevant to the time the petition was filed and not probative in demonstrating the Beneficiary's eligibility at that time. For instance, the newly provided evidence, and the previously submitted evidence from 2018 and 2019, does not demonstrate that the Petitioner had sufficient staffing at the time the petition was filed to relieve the Beneficiary from non-qualifying job duties and to allow him to primarily perform managerial or executive-level executive tasks. Again, as we have discussed in our prior decisions, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The Petitioner continues to ignore this reasonable conclusion and persists in resubmitting the same assertions on motion. However, these contentions and this additional evidence does not demonstrate that our prior decision to dismiss the motion to reconsider was in error.

The Petitioner's motion again does not address our various other reasons for concluding that the Beneficiary would not be employed in a managerial or executive capacity. For instance, on motion, the Petitioner asserts that it need only demonstrate that the Beneficiary would primarily perform managerial or executive-level tasks. As discussed on our prior decision, we agree with this assessment of the applicable law. In fact, we specifically discussed this issue in our prior decisions, pointing to extensive supporting documentation submitted on the record indicating the Beneficiary's direct

² It is noteworthy that in our prior appeal decision we indicated that throughout the record the Petitioner ambiguously discussed the Beneficiary as being employed in both an executive and a managerial capacity but did not clearly indicate which category he qualified under. Again, a petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity. Once again, in support of this motion to reconsider, as with the prior motions, the Petitioner continues to ambiguously discuss the Beneficiary as qualifying as an executive and manager, interchanging the use of these terms in its motion brief.

³ We note that there is nothing preventing the Petitioner from filing a new petition based on evidence establishing his current eligibility, or not as of the date the petition was filed. Further, a motion to reconsider is not the proper motion under which to submit new evidence.

involvement in non-qualifying operational tasks when the petition was filed, such as Amazon receipts reflecting his signature, several invoices from a shipping company from late 2017 including his name as a contact, bank account records with checks written and signed by him for payment to various vendors for small expenses such as its propane, insurance, and cable bills, and automobile loan payments, amongst other similar supporting documentation. We also noted that in contrast, the Petitioner submitted no supporting documentation to substantiate the Beneficiary's delegation of these non-qualifying tasks to his asserted subordinates. However, again, the Petitioner does not directly address these reasonable conclusions and bases for dismissal in support of this motion.

Therefore, we do not agree with the Petitioner's assertion on motion that the Beneficiary's duty description is sufficiently detailed or that we did not properly consider whether he primarily performs qualifying tasks. In fact, as indicated, the Petitioner did not remedy these material deficiencies when filing its prior motions, nor does it articulate why our prior conclusions related to this evidence are inconsistent with law or USCIS policy. Likewise, we stated that despite claiming that the Beneficiary had been acting in his proposed role since 2016, the Petitioner offered a job description comprised of generic job duties, not corroborated by supporting documentation substantiating his performance of managerial or executive-level tasks, such as his claimed implementation of sales or marketing strategies and setting of goals and policies for the organization, amongst other asserted qualifying duties. Again, the Petitioner does not sufficiently indicate why these prior conclusions were in error.

The Petitioner further emphasizes an organizational chart it submitted on the record and states that it "clearly indicates the Petitioner's hierarchal structure and [his] position as [its] chief executive officer." The Petitioner emphasizes that the Beneficiary's duties are only one part of a full analysis in determining eligibility. Once again, we agree with the Petitioner's interpretation of applicable law. However, this assertion ignores that we previously considered and analyzed the provided evidence related to its staffing and organizational structure in our prior decisions. For example, in our appeal decision, we comprehensively analyzed the Petitioner's asserted organizational structure and indicated it did not reflect that the Beneficiary oversaw subordinate managers. We also noted that the duty descriptions of the Beneficiary's subordinates indicated that they all reported to him. Further, we noted that the Petitioner had provided little supporting documentation to substantiate the Beneficiary's delegation of duties to his subordinates or his personnel authority over them. We also determined that the Petitioner did not demonstrate that the Beneficiary would qualify as a personnel manager based on his supervision of subordinate professionals, since it did not articulate that any of his subordinates were professionals as defined by the regulations, nor did it provide documentation to substantiate their bachelor's degrees or that they required such degrees to perform the duties of their positions. Therefore, we reasonably concluded that the Petitioner did not establish that the Beneficiary would have acted as a personnel manager as of the date the petition was filed. However, the Petitioner has not addressed these conclusions directly in any of its motions, or reasonably articulated how they were inconsistent with applicable law or policy.

Similarly, we previously discussed that the Petitioner had provided state employer's quarterly wage documentation from the fourth quarter of 2017, corresponding with the date the petition was filed, reflecting that by December 2017 it only had two employees. In addition, we emphasized that the Petitioner had provided no supporting documentation to substantiate its contention that it regularly engaged independent contractor sales representatives to supplement these employees. Based on this evidence, we determined that that the Beneficiary's would likely be tasked with performing

operational duties, which as we discussed, was substantiated by supporting evidence provided on the record. We also pointed to the lack of evidence to substantiate the Beneficiary's performance of executive-level duties at any time, including prior to, and when, the petition was filed.

Therefore, we disagree with the Petitioner's apparent contention on motion that we did not properly consider its organizational structure when determining the Beneficiary's eligibility. We previously provided sufficient analysis of the Petitioner's organizational structure as of the date the petition was filed and articulated our basis for denying the petition in multiple decisions. The Petitioner does not provide specific reasons why these prior conclusions were inconsistent with applicable law or policy, nor does it demonstrate the Beneficiary's eligibility for the benefit sought.

For the foregoing reasons, the Petitioner has not met the requirements of a motion to reconsider; as such, it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.