



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

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

In Re: 20615329

Date: APR. 13, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, describing itself as a hybrid electronic vehicle components manufacturer, seeks to permanently employ the Beneficiary as a “Senior Contracts Manager” 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 the record did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. In addition, the Director determined the Petitioner did not demonstrate that the Beneficiary acted in a managerial or executive capacity abroad prior to his entry into the United States as a nonimmigrant. We dismissed the Petitioner’s appeal, concluding the Petitioner did not demonstrate that the Beneficiary would be employed in a managerial or executive capacity in the United States, and we declined to address the remaining ground given that the identified basis of ineligibility was dispositive. The matter is now before us on a combined motion to reopen and 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 motions.

**I. LAW**

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.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

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. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and 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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown “proper cause” for that action. Thus, to merit reopening or 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 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 examine any new facts and supporting evidence that pertain to the dismissal of the appeal and we will consider arguments establishing that our decision was based on a misapplication of law or U.S. Citizenship and Immigration Services (USCIS) policy.

As noted above, in our appellate decision we addressed the sole issue of whether the Beneficiary would be employed in a managerial or executive capacity in the United States. We further explained that because this basis for denial was dispositive of the Petitioner’s appeal, we would reserve the Petitioner’s arguments regarding the Beneficiary’s employment abroad in a managerial or executive capacity. *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). Therefore, although the Petitioner’s motion addresses the Beneficiary’s employment abroad, which served as a ground for the denial, we will not address this eligibility requirement and will instead limit our review to only the issue that we addressed in our prior adverse decision.

### A. Motion to Reopen

The Petitioner maintains that the Beneficiary will function exclusively as a function manager, with no direct subordinates. The term “function manager” applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that “(1) the function is a clearly defined activity; (2) the function is ‘essential,’ i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function’s day-to-day operations.” *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

In our decision, we identified notable inconsistencies between the job duties the Petitioner provided and its simultaneous claims that the Beneficiary would exclusively manage, rather than perform, a function related to contracts and negotiations for the company. We noted that the Petitioner's failure to distinguish managerial duties from non-qualifying duties, coupled with the fact that many of the claimed duties, such as reviewing bids and terms and conditions within contract documents, supervising sales teams, and advising managers on contract issues, created uncertainty as to the actual duties the Beneficiary would perform in his proposed position. We also noted that because the Petitioner did not assign a percentage of time to these duties, it left us to question whether the Beneficiary would allocate his time primarily to managerial tasks, as statutorily required. *See* sections 101(a)(44)(A) of the Act. Aside from these deficiencies, we pointed out that despite claiming that the Beneficiary would primarily be managing a function, that function had not been clearly defined. Further, although the record suggested that the Beneficiary would be managing a contracting function, we noted that the fact that a senior contracts director was designated to lead this function within the Beneficiary's division raised questions regarding the true nature of the Beneficiary's claimed function within this structure.

Lastly, we discussed the Petitioner's staffing, concluding that the evidence did not show that the Beneficiary would be employed in a primarily managerial capacity by virtue of managing, rather than performing, his claimed function. Specifically, we noted that the Beneficiary's position within the organization appeared to be very fluid, as the Petitioner stated that the Beneficiary "may work with hundreds of [company] employees" as well as work with various vice presidents, directors, officers, senior managers, and project, sales, and quotation teams. Because the Beneficiary's daily schedule indicated that he interchangeably worked on several of these teams at any given time, we determined that the actual function that the Petitioner claimed the Beneficiary was managing was not clearly defined.

In sum, we provided a comprehensive analysis of the Petitioner's claims and submissions and explained precisely how we reached an adverse conclusion. On motion, the Petitioner states that its motion to reopen "is based upon ample attached documentation, and we respectfully request approval of the underlying petition." The Petitioner submits the following documentation on motion:

- Diagram [redacted] – Commercial and Contracts Function"
- Diagram "Hierarchy of the Contracts Function – Petitioner and Employment Abroad"
- Commercial Delegations Letter from the Senior Director of Contracts
- Commercial Contract Review and Approval Policy of [redacted] Corporation
- List of major projects under Beneficiary's supervision 2015-2021
- Clarification of the duties of the Senior Contracts Manager

While we acknowledge the submission of the above documentation, the Petitioner does not offer new facts that are relevant to the numerous bases for our decision to dismiss the appeal. Although the Petitioner provides new evidence in the form of diagrams related to the "Contracts and Commercial Function," and a copy of its "Commercial Contract Review and Approval Policy of [redacted] Corporation," all of these documents indicate their effective date is October 2021. The Petitioner also submits a March 2021 letter from [redacted] the Petitioner's contracts director, which is signed by the Beneficiary and outlines the Beneficiary's commercial delegations as of that date. The

Petitioner does not state how the information offered in these documents is relevant to the issue of whether the facts and circumstances that existed in August 2020, when this petition was filed, demonstrated the Petitioner's ability to employ the Beneficiary in a primarily managerial capacity. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied as of the time of the filing. 8 C.F.R. § 103.2(b)(1).

Further, while the Petitioner submits a list of the Beneficiary's major contracts and supplemental information clarifying the nature of the day-to-day duties of his position, the Petitioner fails to articulate how this documentation demonstrates that the Beneficiary would be employed in a primarily managerial capacity. As noted in our prior decision, while we acknowledge that the Beneficiary holds a managerial title and may exercise discretion over the Petitioner's day-to-day operations, the position descriptions alone do not establish that the actual duties performed by the Beneficiary are primarily managerial in nature. While we note the Petitioner's submission of additional documentation on motion with regard to the Beneficiary's duties, it has not sufficiently explained how this documentation constitutes new facts to warrant reopening.

Because the Petitioner has not submitted relevant new facts, it has not met the requirements of a motion to reopen and the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

#### B. Motion to Reconsider

We determined in our appellate decision that the Petitioner did not establish that the Beneficiary was engaged in primarily managerial duties. On motion, the Petitioner asserts that we erred in our prior decision by focusing on staffing and incorrectly concluding that the Beneficiary was not employed as a function manager. However, we discussed this issue in detail in our prior decision, pointing to extensive supporting documentation submitted on the record indicating the Beneficiary's direct involvement in non-qualifying operational tasks such as his work on bids, contract negotiations, and managing disputes with sales, operational, and other employees. We also noted that the Petitioner submitted insufficient evidence to substantiate the nature of the claimed function the Beneficiary would manage, as the record indicated that he would be performing operational duties with regard to contracts and negotiations alongside his colleagues rather than delegating those tasks to others. Further, as the record indicated that the Beneficiary acts through delegation of authority from the company's chief executive officer, general counsel, and the senior contracting director, who have actual discretion over contracts in the Beneficiary's division, we determined that the true nature of his claimed function could not be determined.

On motion, the Petitioner has not contended that our appellate decision was incorrect based on the evidence of record at the time of that decision. Instead, the Petitioner submits new evidence, such as a statement clarifying the Beneficiary's duties, but such documentation fails to resolve the deficiencies and inconsistencies noted in our prior decision regarding the Beneficiary's position. The Petitioner did not directly address the material bases for our dismissal in support of its motion to reconsider by articulating and documenting the nature of the Beneficiary's function or how he was specifically relieved of performing operational tasks, and by whom. Thus, the Petitioner has not shown proper cause for us to reconsider the proceeding on this issue.

The Petitioner also asserts that our failure to examine previously approved L-1A intracompany transferee visa petitions on behalf of the Beneficiary related to the same position was arbitrary and capricious, and warrants reconsideration. We disagree. While we acknowledged in our appellate decision that the Beneficiary was previously approved for L-1A intracompany transferee nonimmigrant visas filed by the Petitioner, we also noted that in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii). We further noted that while the L-1A category largely mirrors the immigrant classification for multinational executives or managers, each petition filing is a separate proceeding with a separate record and a separate burden of proof.

Although USCIS has approved L-1A nonimmigrant visa petitions filed on behalf of the Beneficiary, the prior approvals do not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *Elizur Int'l Inc. v. USCIS*, 2021 WL 1784615 (E.D.Va. 2021); *Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021). Furthermore, as noted in our appellate decision, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petitions, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

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

### III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision. Accordingly, the motions will be dismissed.

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

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