



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

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

In Re: 25801616

Date: APR. 27, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a seller of furniture products, 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 a managerial or executive capacity.

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 filed a motion to reopen and a motion to reconsider, which was granted by the Director and which affirmed the denial of the petition 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.

We dismissed the Petitioner's appeal, concluding that 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 filed a motion to reopen and a motion to reconsider, and two subsequent motions to reconsider, that we dismissed. The matter is now before us again on a motion to reconsider.

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 bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 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 benefit sought. The scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i).

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

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 current motion, the Petitioner reiterates the same contentions submitted in support of its prior motion to reconsider and attaches a copy of our most recent decision dated September 16, 2022. Specifically, the Petitioner again asserts that the Beneficiary's duty description is sufficiently detailed to establish that he will be employed in a qualifying capacity in the United States. Despite this assertion, we note that the Petitioner continues to ambiguously discuss the Beneficiary as being employed in both an executive and a managerial capacity as we noted in our prior decision. 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. Here, 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.

The Petitioner also “insists” that its 2020 tax return, submitted in support of its most recent motion to reconsider, establishes that it has sufficient subordinate staff to relieve the Beneficiary from performing non-qualifying duties as well as its ability to pay the proffered wage. As discussed in our prior decision, however, this evidence is not relevant to the time the petition was filed and therefore is not probative in demonstrating the Beneficiary’s eligibility at that time. Moreover, although we advised the Petitioner in our prior decision that a motion to reconsider is not the proper motion under which to submit new evidence, the Petitioner disregards that statement and erroneously continues to rely on evidence that came into existence subsequent to the petition’s filing in support of its current motion.²

To establish merit for reconsideration of our latest decision, the Petitioner must both state the reasons why it believes the most recent decision was based on an incorrect application of law or policy, and it must also specifically cite laws, regulations, precedent decisions, and/or binding policies it believes we misapplied in our prior decision. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

Although we acknowledge the Petitioner’s submission of a brief and the general assertions of error contained therein, we determine the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. 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. Moreover, the brief lacks any cogent argument as to how we misapplied the law or policy in dismissing the prior motion to reconsider.

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.

² Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm’r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm’r 1971).