



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

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

In Re: 28492073

Date: SEP. 06, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a book publisher, seeks to permanently employ the Beneficiary as its general manager 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 that the Petitioner did not establish that (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary had been employed abroad in a managerial or executive capacity, and (3) the Petitioner had been doing business in the United States for at least one year at the time of filing. We dismissed a subsequent appeal after determining the record did not demonstrate the Petitioner would employ the Beneficiary in a managerial or executive capacity.<sup>1</sup> The matter is now before us on motion to reconsider.

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 motion.

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

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<sup>1</sup> Because the Petitioner did not meet its burden with respect to this eligibility requirement, this issue was dispositive of the appeal. Accordingly, we declined to reach and reserved the Petitioner's appellate arguments regarding the two remaining grounds for denial addressed in the Director's decision. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

On motion, the Petitioner contests the correctness of our prior decision. Specifically, the Petitioner asserts that our decision dismissing its appeal “didn’t discuss the issue of Beneficiary working in the U.S. as a functional manager,” and emphasizes that this is the “only issue” underlying its request for reconsideration. The Petitioner further asserts that the Director’s decision denying the petition “mistakenly applied the law of functional manager,” and cites to *Matter of G-*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The record does not support the Petitioner’s assertion that we overlooked or otherwise failed to address its claim that the Beneficiary would be employed as a function manager consistent with the definition of “managerial capacity” at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). In our decision dismissing the appeal, we acknowledged that “the Petitioner has claimed that the Beneficiary’s offered position of general manager meets the requirements for executive capacity, and alternatively claims that the position is managerial in nature because it will involve the supervision of professional staff and management of the Petitioner’s essential function.” We further addressed the Petitioner’s specific function manager claim and the evidence in support of that claim, discussed relevant adopted decisions applicable to adjudication of cases involving function managers,<sup>2</sup> and explained why the Petitioner’s evidence was insufficient to support its assertion that the Beneficiary is eligible for the requested multinational manager classification based on his claimed management of an essential function.

In applying the relevant law to the facts presented, we noted several evidentiary deficiencies, including: the Petitioner’s submission of overly broad position descriptions that did not define the Beneficiary’s day-to-day tasks within the context of its business; a lack of evidence in the record documenting the Petitioner’s staffing and structure at the time of filing through adjudication; and unresolved material inconsistencies in the evidence the Petitioner provided to support its claim that foreign staff provide substantial support to the U.S. company in carrying out its day-to-day operations. Accordingly, we determined the record did not support a determination that the Beneficiary would primarily manage an essential function of the company, or that he would otherwise primarily perform managerial or executive duties consistent with the statutory definitions at sections 101(a)(44)(A) or (B) of the Act.

On motion, the Petitioner does not address our specific reasons for dismissing its appeal or assert that we misapplied relevant law or policy in doing so. Rather, it alleges, incorrectly, that we entirely overlooked its “function manager” claim and requests reconsideration solely on this basis.

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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

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<sup>2</sup> See *Matter of G-*, Adopted Decision 2017-05 (AAO Nov. 8, 2017) and *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).