U.S. Citizenship and Immigration Services

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

In Re: 20291306

Date: APR. 04, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a sports management and marketing firm, seeks to temporarily employ the Beneficiary as the marketing director of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding the record did not establish that: (1) the Petitioner would support the Beneficiary in a managerial or executive position within one year of the petition's approval; and (2) the Beneficiary was employed abroad in a managerial or executive capacity.[2] We dismissed a subsequent appeal, concluding the record did not establish that: (1) the Petitioner had a qualifying relationship with the Beneficiary's foreign employer, and (2) the Beneficiary was employed abroad in an executive capacity. We reserved the issue of whether the new office would support the Beneficiary in a managerial or executive position within one year of the petition's approval. The Petitioner then filed a motion to reopen and a motion to reconsider, which we also dismissed. The matter is now before us again on a 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 motion to reopen and the motion to reconsider.[3]

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[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

[2] To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[3] Because the basis for dismissal of the motion to reopen and motion to reconsider we will describe is dispositive, we decline to reach and hereby continue to reserve the issues of whether the Petitioner was employed abroad in a managerial or executive capacity and whether it would support the Beneficiary in an executive or managerial position within one year. *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).

## I. MOTION TO REOPEN

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

In our prior decision issued in August 2021, as well as in our prior appeal decision, we concluded the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer as of the date the petition was filed in October 2018. We noted that in support of the prior motion to reopen the Petitioner submitted documents reflecting a change in its ownership and control taking place after the petition was filed.[4] More specifically, the Petitioner contended that modifications to its operating agreement and other relevant corporate documentation, finalized in October 2020, established that the Beneficiary owned and controlled both it and the foreign employer. As a result, we concluded that the Petitioner had submitted no new evidence to demonstrate it was majority owned and controlled by the Beneficiary in October 2018 when the petition was filed.

In addition, in our prior decision we pointed to our appeal decision which indicated that the Petitioner did not qualify as a branch, subsidiary, or affiliate of the foreign employer when the petition was filed. For instance, we explained that the Petitioner's initial operating agreement did not show that it was majority owned and controlled by the foreign employer, but by another member who was not the Beneficiary. We noted that this asserted ownership did not meet any of the four definitions of subsidiary given in the regulation.[5]

In support of the current motion, the Petitioner submits the same brief and points to the previously provided supporting evidence. The Petitioner again emphasizes changes it made to its ownership in October 2020 and asserts this establishes that the Beneficiary owns and controls both it and the foreign employer. However, as we clearly indicated in our prior decision, 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). In support of the current motion to reopen, the Petitioner provides no new evidence to establish that there was a qualifying relationship between it and the foreign employer as of the date the petition was filed. As noted in our prior decision, where significant changes are made to the initial request for approval, a petitioner must file a new

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[4] As the specifics of the ownership in the Petitioner and foreign employer, both as of the date the petition was filed and thereafter, are clearly discussed in our two prior decisions, we decline to reiterate these facts again since the following analysis is dispositive of this matter.

[5] Under 8 C.F.R. § 214.2(l)(1)(ii)(K), subsidiary means:

> a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

As stated in our appeal decision, the Petitioner and the foreign employer do not qualify as affiliates. When the petition was filed in October 2018, the foreign entity and the Petitioner were not "subsidiaries both of which are owned and controlled by the same parent or individual," nor were they "owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*)-(*2*).

petition rather than seek approval of a petition that is not supported by the facts in the record. Therefore, since the Petitioner has not stated new facts supported by documentary evidence necessary to support a motion to reopen, the motion must be dismissed. *See* 8 C.F.R. § 103.5(a)(2).

## II. MOTION TO RECONSIDER

For similar reasons, we will also dismiss the current motion to reconsider. Again, 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

However, on motion, the Petitioner submits the same brief, points to previously provided evidence, and again offers the same assertions. For example, with respect to qualifying relationship, the Petitioner contends that it modified its ownership structure after the date the petition was filed to establish the claimed qualifying relationship between it and the Beneficiary's foreign employer. The Petitioner states that it "respectfully requests that the Chief's decision be modified to recognize that the Beneficiary has greater ownership and control of the Petitioner's company than the other members."

First, the Petitioner has not met the requirements of a motion to reconsider, as it has not clearly articulated why our prior decision represented an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Further, as we indicated, the evidence and assertions of the Petitioner have not changed. In fact, based on its continued statements it appears that the Petitioner clearly acknowledges that there was no qualifying relationship between it and the foreign employer when the petition was filed. Once again, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied *from the time of the filing* [emphasis added] and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). We have clearly articulated this proper conclusion in two prior decisions, and the Petitioner has not articulated or supported why this determination is an incorrect application of law or policy. Therefore, the motion to reconsider must be dismissed.

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsidering the previous decision or otherwise established eligibility for the benefit sought.

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

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