



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

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

In Re: 20882291

Date: JUN. 07, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a beauty salon and spa, seeks to temporarily employ the Beneficiary as its general manager in the United States 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 Beneficiary was employed abroad in a managerial or executive capacity; and (2) she would be employed in the United States in a managerial or executive capacity. The Petitioner later filed an appeal that we dismissed.<sup>1</sup> The matter is now before us on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the Petitioner's motion to reconsider.

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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).

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<sup>1</sup> In dismissing the appeal, we only analyzed whether the Beneficiary was employed abroad in a managerial or executive capacity, and due to the dispositive nature of this issue, we reserved the other issue of denial. *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). Similarly, in this decision, we will only discuss whether the Beneficiary was employed in a managerial or executive capacity abroad, and since this issue is dispositive of this motion, we will again reserve the other issue of denial.

In dismissing the Petitioner's appeal, we concluded that it did not establish that the Beneficiary was employed in an executive capacity abroad.<sup>2</sup> We pointed to the Beneficiary's foreign duty descriptions and concluded that they did not sufficiently convey her executive-level tasks abroad, such as business plans she implemented, strategic advice she offered, financial policies or guidelines she put in place, or investments she monitored. Further, we stated that the Petitioner did not support its contention on appeal that U.S. Citizenship and Immigration Services (USCIS) had issued "two contradictory decisions." We also indicated that the Petitioner had provided conflicting assertions as to the foreign employer's organizational structure, stating that the Beneficiary directed the entire foreign organization, while also providing evidence reflecting that she only oversaw a portion of the entity.

On motion, the Petitioner again states that the Beneficiary was employed abroad in an executive capacity, but in apparent contradiction, cites to *Matter of Z-A-, Inc.*, an adopted decision issued by our office relevant to function managers.<sup>3</sup> The Petitioner asserts that the Beneficiary "holds executive experience in international sales, [the] beauty industry, business development, and strategic business management." The Petitioner states that we should "consider and reserve USCIS' erroneous, arbitrary and capricious decision and remand it back to the USCIS to conduct and impartial and diligent review of the evidence."

The Petitioner has not met the requirements of a motion to reconsider. First, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision, in this case, our prior appeal decision. The Petitioner's contention that this matter should be remanded to the Director for review and the issuance of another decision has no basis in applicable law or policy. Further, the Petitioner does not specifically articulate why our previous appeal decision represented an incorrect application of law or USCIS policy based on the evidence in the record at the time of our decision. As discussed above, we provided specific grounds for dismissing the appeal; namely, we indicated that the foreign duty descriptions provided by the Beneficiary were generic and provided few credible details as to her actual executive-level duties abroad.<sup>4</sup> In addition, we stated that the Petitioner had provided conflicting assertions as to the Beneficiary's place within the foreign organizational structure, at times stating that she oversaw the entire organization and elsewhere asserting that she

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<sup>2</sup> On appeal, the Petitioner only asserted that the Beneficiary was employed in an executive capacity abroad; as such, we did not analyze whether she was employed in a managerial capacity.

<sup>3</sup> The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. 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). Here, the Petitioner did not previously, nor does it on motion, articulate how the Beneficiary was employed as a function manager abroad. Therefore, the citation to this matter on motion is not convincing, and inconsistent with its continued assertion that the Beneficiary qualified as an executive abroad.

<sup>4</sup> Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

only held authority over only a portion of the organization.<sup>5</sup> The Petitioner submits no specific discussion to address these valid grounds for dismissing the appeal, nor does it articulate why these conclusions were inconsistent with applicable law or policy. In fact, the Petitioner questionably cites to an inapplicable adopted decision specific to function managers, a decision with no apparent relevancy to demonstrating that she was employed in an executive capacity abroad. Therefore, the Petitioner has not met the requirements of a motion to reconsider, and it must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration by demonstrating that our prior dismissal of its appeal was inconsistent with applicable law or policy.

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

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<sup>5</sup> The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).