



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

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

In Re: 19634293

Date: APR. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a real estate asset management company, seeks to permanently employ the Beneficiary as its “Chief Asset 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 Vermont Service Center denied the petition, concluding the record did not establish that the Petitioner had a qualifying relationship with the Beneficiary’s foreign employer. We dismissed the appeal and added a second ground for ineligibility, concluding the Petitioner did not establish that the Beneficiary would be employed in the United States in an executive capacity. The Petitioner subsequently filed a motion to reopen and reconsider that we dismissed as untimely. The Petitioner then filed a motion to reconsider, and we affirmed our decision that the prior motion was untimely. Notwithstanding this determination, we concluded that the Petitioner demonstrated a qualifying relationship between it and the Beneficiary’s former foreign employer. However, we dismissed the motion to reconsider, determining the Petitioner did not adequately address our previous conclusion that it did not demonstrate the Beneficiary would be employed in an executive capacity. The Petitioner filed another motion to reconsider that we dismissed. The matter is now before us on another motion to reconsider.

On motion, the Petitioner again asserts that it submitted substantial evidence to demonstrate the Beneficiary qualifying executive capacity. The Petitioner contends that we erred in our prior decision by focusing solely on the Beneficiary’s duties and the lack of percentages of time assigned to each of his tasks. The Petitioner states that we improperly discounted the Beneficiary’s oversight of various legal entities sharing common ownership within the company’s greater corporate organization.

For the reasons discussed below, the motion currently before us will be dismissed and the petition will remain denied.

## 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). 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. We may grant a motion that satisfies these requirements.

## II. ANALYSIS

We will only analyze whether our prior decision to dismiss the Petitioner's motion to reconsider represented an incorrect application of law or policy and whether this decision was incorrect based on the evidence in the record of proceedings at that time.

In our prior decision, we emphasized that the Petitioner had provided a complicated picture of the Beneficiary's asserted executive employment in the United States, indicating that despite its limited operations and employees, he would oversee other entities and their employees, including [redacted] [redacted] an entity with an asset management agreement in place with [redacted] [redacted] who acts as "the direct employer of all of the 350 plus employees of the [redacted]". In addition, the Petitioner stated that the Beneficiary owns 95% of a [redacted] who in turn has another asset management agreement in place with the "[redacted]". The Petitioner again points to these management agreements on motion and asserts that we did not sufficiently consider them and the Beneficiary's oversight of "all activities necessary and proper for the management and operation of the hotel[s]," including its "approximately 375 employees."

However, we disagree with the Petitioner's contention that we did not sufficiently consider all the evidence submitted or that we focused only on the Beneficiary's asserted duties. First, in our prior decisions we directly discussed the Petitioner's assertion that the Beneficiary would oversee operating affiliates, their employees, and the management of two luxury hotels. For instance, in our prior decision, we noted that the claimed asset management agreements were executed several years prior to the date the petition was filed and that there was little supporting evidence to reflect the Petitioner's engagement in providing these services, and in turn, the Beneficiary's likely executive-level role overseeing these operations. We indicated in our prior decision that the submitted "Amended and Restated Asset Management Agreement" was executed between [redacted] and [redacted] in December 2011. The current motion was filed in in July 2021, nearly ten years prior to the date the discussed asset management agreement was executed and more than five years after the time the petition was filed in January 2016. 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). The Petitioner must resolve ambiguities 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).

Therefore, our prior decisions reflect that we did consider the totality of the evidence on the record, in addition to the Beneficiary's duties, contrary to the Petitioner's assertion on motion. Therefore, we

do not agree that our prior determination, that the supporting evidence to substantiate the Beneficiary's proposed executive-level role was insufficient, was inconsistent with applicable law or policy.

Furthermore, on motion, the Petitioner does not properly address our conclusions related to the Beneficiary's proposed duties set forth in our prior decisions. For instance, we listed the Beneficiary's stated duties, and discussed them in our prior March 2019 decision, concluding that these reflected he would likely be primarily engaged in performing non-qualifying operational duties directly related to the Petitioner's provision of services. We pointed to the Beneficiary's duty description stating that he would "advise ownership" by "reviewing industry trends," "perform monthly financial review[s] of property performance," complete "annual strategic review[s]," communicate ownership expectations, "assist" in providing ideas at re-engineering staffing models, track sale prices of comparable properties, and review proposed budgets, marketing plans, and operating plans for ownership. We also noted other apparent service-related duties, such as the Beneficiary tracking occupancy, revenues, key statistical trends, and other properties being considered for development. In sum, we concluded that the Beneficiary's duties indicated that he would likely be primarily engaged in the provision of professional services, rather than his claimed executive-level role with authority over a multi-layered organization including hundreds of employees. However, on motion, the Petitioner merely reiterates prior contentions and again points to duties included in the previously discussed asset management agreements. The Petitioner provides little indication as to how our conclusions with respect to the Beneficiary's listed duties were incorrect.

For the foregoing reasons, we conclude that our previous decision to dismiss the Petitioner's motion to reconsider was a correct application of law and policy and based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

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