



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

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

In Re: 24265182

Date: JAN. 25, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner describes itself as a provider of lab testing services. It seeks to permanently employ the Beneficiary as its chief executive officer and 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).

The Director of the Nebraska Service Center denied the petition on multiple grounds, concluding that the Petitioner did not establish the following: (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary was employed abroad in a managerial or executive capacity, (3) the Petitioner was doing business as defined by the regulations, (4) the Petitioner had the ability to pay the Beneficiary's proffered wage, and (5) the foreign employer was doing business.

We dismissed the appeal, noting that the Petitioner had only specifically addressed one of the five grounds of denial and thereby abandoned any challenge of the four remaining grounds, each of which was independently dispositive of the appeal. We also affirmed the Director's determination that the Petitioner did not establish that it had the ability to pay the Beneficiary's proffered wage. Next, the Petitioner filed a combined motion to reopen and reconsider, which we dismissed, followed by a motion to reconsider, which we also dismissed. The matter is now before us again on a 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 Petitioner's motion.

I. 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).

II. ANALYSIS

The issue to be addressed in this decision is whether the Petitioner established that our decision to dismiss the prior motion to reconsider was based on an incorrect application of law or USCIS policy based on the facts on the record at that time. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing¹ and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision.

In our prior decision, we dismissed the motion to reconsider, concluding that the Petitioner did not sufficiently articulate how our prior decision was inconsistent with applicable law or policy. We pointed out that the Petitioner had resubmitted its appeal brief which we had already been considered on appeal; and we highlighted that even though the Director listed five independent grounds for denying the petition, the Petitioner’s appeal brief specifically addressed only one the ground regarding the Beneficiary’s claimed managerial or executive capacity in the United States, thereby effectively abandoning the remaining four grounds. We determined that the Petitioner still did not identify a law or policy that prohibits us from deeming those four grounds as have been abandoned under these circumstances.

In addition, we again addressed the issue of the Petitioner’s ability to pay, reiterating our conclusion that the Petitioner did not establish that it had the ability to pay the Beneficiary’s proffered wage in 2018. We provided a comprehensive analysis, highlighting the Petitioner’s 2018 tax return, which showed that the Petitioner lacked sufficient income or assets to account for the shortfall in the payment of the Beneficiary’s proffered wage for that year.² We then concluded that the Petitioner again neglected to specify a basis in applicable law or policy demonstrating that it was erroneous to rely on the issue of ability to pay as a basis for denying the petition and subsequently dismissing the appeal.

In support of the current motion to reconsider, the Petitioner continues to make vague assertions, claiming that it had provided “fully briefed legal arguments” addressing all five grounds cited in the Director’s denial. However, as stated in our prior decisions, the Petitioner’s appeal brief was reviewed and fully considered when originally before us. Further, despite making this general contention, the Petitioner does not identify which specific legal arguments it believes adequately addressed each of the denial grounds. As such, the Petitioner does not adequately support the argument that we erred in dismissing its appeal and its two subsequent motions.

¹ The petition was filed in November 2016 and the current motion to reconsider was filed in August 2021.

² We observed that the Beneficiary was compensated \$44,700 in 2018, which was approximately \$25,300 below the proffered wage of \$70,000. We further pointed to the Petitioner’s net taxable income of -\$74,162, as well as its net assets of \$24,496 and net liabilities of \$5027 as of the end of 2018.

Further, regarding the issue of ability to pay, the Petitioner argues that it “provided evidence of wages to all authorized periods under L-1A,” arguing that “any averments of gaps were the periods where Beneficiary was not authorized to work in the U.S. under L-1A, i.e., outside of L-1A approved periods.” The Petitioner does not clarify which “gaps” in employment it perceives as being relevant to the ability to pay requirement, which applies specifically to the Petitioner and must be met regardless of whether the Beneficiary actually worked for the Petitioner while the petition was pending.

The regulation at 8 C.F.R. § 204.5(g)(2) states that “the petitioner must demonstrate this ability [to pay] at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence.” The instant petition was filed in 2016 and was still pending in 2018. As previously determined, the Petitioner did not establish that it met the ability to pay requirement in 2018. The Petitioner’s contention that it “provided evidence of wages to all authorized periods under L-1A” does not establish that it had the ability to pay the Beneficiary’s proffered wage during the year in question. In sum, the current motion, as with the one that immediately preceded it, is not supported by specific arguments establishing that the adverse conclusion regarding the Petitioner’s ability to pay resulted from an incorrect application of law of USCIS policy.

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

ORDER: The motion to reconsider is dismissed.