



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

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

In Re: 16974711

Date: JUL. 06, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a distributor of court recording audio-visual systems and equipment, seeks to continue the Beneficiary's temporary employment as its operations manager 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 Texas Service Center denied the petition concluding that the Petitioner did not establish that: (1) the Beneficiary would be employed in a managerial or executive capacity in the United States; and (2) the Beneficiary had at least one year of qualifying employment abroad in a managerial or executive capacity in the three years preceding his transfer to the United States in L-1A status. We dismissed the Petitioner's appeal. The Petitioner subsequently filed a combined motion to reopen and motion to reconsider, which we also dismissed. The matter is now before us on a combined motion to reopen and reconsider.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss both motions.

**I. LAW**

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) establish that the decision was based on an incorrect application of law or U.S.

Citizenship and Immigration Services (USCIS) policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or 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 applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

## II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). In this case, the prior decision is our decision dated December 8, 2020, in which we dismissed the Petitioner’s combined motion to reopen and motion to reconsider. The issue before us is whether the Petitioner has presented new facts, supported by evidence, to merit reopening, and whether it established that our prior decision was based on an incorrect application of law or USCIS policy.

### A. Procedural History

As noted, the Director denied the petition concluding that the record did not establish that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial capacity as defined at section 101(a)(44)(A) of the Act.<sup>1</sup> We dismissed the Petitioner’s appeal, concluding that the record did not establish that the Beneficiary would be employed in the United States in a managerial capacity under the extended petition.<sup>2</sup>

In dismissing the appeal, we observed that the Petitioner must show that the Beneficiary would perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act to be eligible for L-1A classification in a managerial capacity, and emphasized that a position that does not meet all four of these elements is not a qualifying managerial position. We concluded that the record did not establish that the offered position of operations manager would involve either the supervision of subordinate managerial, supervisory, or professional employees or the management of an essential function within the organization, as required by section 101(a)(44)(A)(ii) of the Act. The Petitioner did not articulate a claim that the Beneficiary would manage an essential function. Further, the record indicated that the Beneficiary is the Petitioner’s sole employee and did not support a determination that, as of the date of filing, he would be engaged in the supervision and control of subordinate managerial, supervisory, or professional employees. Finally,

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<sup>1</sup> Prior to the dismissal of the appeal, the Petitioner did not claim that the Beneficiary would be employed in the United States in an executive capacity.

<sup>2</sup> Since this adverse determination was dispositive of the appeal, we reserved the Petitioner’s appellate arguments regarding the Director’s separate determination that it did not establish that the Beneficiary had been employed abroad in a managerial capacity. *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).

we agreed with the Director's determination that, even if the Petitioner had established that the offered position meets all four statutory elements of "managerial capacity" at section 101(a)(44)(A) of the Act, the record did not establish that the Beneficiary would be performing primarily managerial duties. We noted that, based on the Petitioner's breakdown of the Beneficiary's proposed responsibilities, he would spend at least 60 percent of his time on non-managerial duties including market research, "product and system development," and providing "customer assistance in training, product support [and] supply management."

In its previous motion to reopen, the Petitioner submitted updated bank statements, invoices, and sales order receipts as evidence that the Beneficiary's activities in the United States have been generating income and resulting in contract work for the company. It stated that the Beneficiary would be "acting in [an] executive capacity and as a managing agent" and will "oversee the advertising, recruiting, and hiring process." We acknowledged that the Petitioner appeared to be claiming for the first time that the Beneficiary would be employed as a function manager or in an executive capacity as defined at section 101(a)(44)(B) of the Act. However, we determined that these new claims were not corroborated by the existing record or by the new evidence submitted in support of the motion, much of which post-dated the filing of the petition. We also observed that, while the Petitioner indicated on motion that the Beneficiary is expected to manage subordinate employees in the future, it was evident that he did not do so at the time of filing.<sup>3</sup> Accordingly, we dismissed the motion to reopen.

We also dismissed the Petitioner's motion to reconsider, concluding that it did not demonstrate that our previous dismissal decision was based on an incorrect application of law or policy. The Petitioner asserted that the Beneficiary is "responsible for managing the company as a whole, hiring employees and taking personnel actions and managing the company's day-to-day operations consistent with Section 101(a)(44)(A) of the Act." We acknowledged in our decision dismissing the appeal that the Beneficiary would have this authority and that the record established that the position satisfies elements of the definition of managerial capacity at section 101(a)(44)(A)(i), (iii) and (iv) of the Act. However, the Petitioner did not contest our determination that the Beneficiary would not be supervising and controlling the work of subordinate managers, supervisors, or professionals, as required by section 101(a)(44)(A)(ii) of the Act, or our conclusion that his duties, as described in the record, had not been shown to be primarily managerial in nature.

## B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

In support of the instant motion, the Petitioner submits a brief and supporting exhibits which include: (1) its limited liability company operating agreement identifying the Beneficiary as a member of the company; (2) business documents dated between 2013 and 2015, intended to establish that the Beneficiary was employed by the foreign affiliate in a qualifying capacity prior to his transfer to the

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<sup>3</sup> A petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing. 8 C.F.R. 103.2(b)(1). A visa petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of; *see also Matter of Michelin Tire Corp.* 17 I&N Dec. 248, 249. (Reg. Comm'r 1978).

United States; (3) Petitioner's business documents dated 2017 through 2019, intended to demonstrate that the Beneficiary has the authority to execute agreements, contracts and international shipping documents; and (4) additional documentation that the Petitioner claims was submitted with the initial L-1A petition filed on behalf of the Beneficiary. This includes evidence related to the foreign entity's ownership and control, its financial status and business activities, organizational charts, and a partial copy of a company letter submitted in support of the previous petition.

The Petitioner has not submitted new facts, supported by documentary evidence, that would warrant reopening. The sole issue addressed in our appellate decision was whether the Beneficiary would be employed in a managerial capacity in the United States. The only evidence submitted with the current motion that is relevant to this issue is additional documentation demonstrating his authority to sign contracts and agreements on behalf of the company. However, this evidence does not address the grounds for dismissal of the appeal. As discussed, we have acknowledged that the Beneficiary, as the sole employee in the United States and a member of the petitioning limited liability company, has authority over the management of the company, its eventual hiring of employees, and its day-to-day operations, which is consistent with the definition of managerial capacity at section 101(a)(44)(A)(i), (iii) and (iv) of the Act. However, the record does not establish that he manages an essential function of the company or that he supervises and controls the work of managerial, supervisory or professional personnel, as required by section 101(a)(44)(A)(ii) of the Act. Nor has the Petitioner established that he would primarily perform managerial duties under an extended petition. The new evidence submitted on appeal does not address these deficiencies. Although the Petitioner also submits a brief, it is nearly identical to the brief submitted in support of the previous motion and therefore does not introduce new facts.

For the reasons discussed, the motion to reopen will be dismissed.

#### C. Motion to Reconsider

In order to warrant reconsideration, the Petitioner must establish that our prior decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3).

As noted, while the Petitioner has submitted a brief in support of this motion, it was copied nearly verbatim from the brief submitted in support of the prior motion to reopen and reconsider, and as such, it only contests our decision dismissing the appeal. We addressed the Petitioner's arguments in our prior decision. The brief contains only one passing reference to our dismissal of the first motion and does not assert that our immediate prior decision was incorrect based on a misapplication of law or USCIS policy. Accordingly, the Petitioner's submission does not meet the requirements of a motion to reconsider, and the motion will be dismissed.

#### D. Prior Approval

While the instant motion was pending, USCIS updated the *USCIS Policy Manual's* guidance regarding deference to prior approvals. 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policy-manual>; see also USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility*

*in Requests for Extensions of Petition Validity* (Apr. 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>.

Because the Petitioner in this matter sought an extension of the Beneficiary's L-1A status, we have considered the prior decisions in light of current USCIS policy. The policy clarifies that USCIS gives deference to prior determinations when adjudicating extension requests involving the same parties and facts unless there was a material error, material change in circumstances or in eligibility, or new material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility. However, USCIS officers are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated strictly because of a prior approval (which may have been erroneous). *See Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). USCIS decides each matter according to the evidence of record on a case-by-case basis.<sup>4</sup>

The record reflects that the Director acknowledged the prior approval of an L-1A petition in his decision but determined that the evidence submitted with this petition did not establish the Beneficiary's eligibility for the benefit sought. The Director also denied the petition, in part, based on a determination that the Petitioner did not provide requested information and documentation in response to a request for evidence (RFE). The regulations at 8 C.F.R. § 214.2(l)(viii) and 8 C.F.R. § 214.2(14)(i) grant the Director discretion to request additional evidence in support of a petition requesting an extension of L-1 status. A failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The Petitioner has stated that it did not provide all requested evidence because it was advised not to submit documentation it had submitted previously and believed that this instruction applied to evidence it submitted with the initial petition filed on the Beneficiary's behalf. Nevertheless, we note that the burden of proof is on the Petitioner in the current matter. Section 291 of the Act, 8 U.S.C. § 1361. In evaluating statutory eligibility, USCIS is limited to the information contained in the record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

We also observed in our decision dismissing the prior motion that we are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. We emphasized that if the previous petition was approved based on the same evidence contained in the record, the approval would constitute an error on the part of the Director. The evidence submitted with the current motion includes copies of evidence submitted in support of the initial petition, including a partial copy of the company's letter in support of the petition. The letter submitted in support of the earlier petition closely resembles that submitted with the instant petition and indicates that the Beneficiary, in his U.S. position as operations manager, would be spending more than half of his time on non-managerial duties such as "customer assistance in training, product support, supply management" (25%); "product and system development and refining" (20%); and "market research" (15%). The approval of the petition despite the Petitioner's submission of a statement indicating that the Beneficiary would be engaged primarily in non-managerial duties constitutes error on the part of the Director. As discussed above, the fact that the Beneficiary has been entrusted with authority to negotiate and bind the company to major contracts, to hire any future

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<sup>4</sup> *See 2 USCIS Policy Manual, supra*, at A.4(B)(1).

employees, and to oversee all aspects of the business does not establish his eligibility for classification as an L-1A manager absent evidence that his actual duties are primarily managerial in nature.

The Petitioner also states on motion that the company “was essentially a new office” when it received its initial approval and maintains that the Beneficiary intended to “appropriately staff” the company upon approval of this extension petition. A “new office” is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to develop its staffing and operations to the point where it can support an executive or managerial position.

The Petitioner was established in 2013 and its initial petition filed on the Beneficiary’s behalf was not filed as a “new office” petition. Accordingly, the Petitioner was required to demonstrate that it could support a managerial or executive position at the time it filed the initial petition in April 2016 to warrant an approval for the requested three-year validity period. The evidence submitted with the current filing does not show that the Petitioner had met this burden, either when filing the initial petition, or at the time it filed this request for an extension in 2019. The record reflects that the Petitioner has not yet filled any positions identified on the initial organizational chart prepared in 2016 and that it continues to require the Beneficiary to spend more than half of his time on non-managerial duties necessary to maintain the company’s day-to-day operations.

For these reasons, we conclude that the approval of the initial petition involved material error on the part of the Director, and we are therefore not bound to give deference to that prior determination of eligibility.

### III. CONCLUSION

The Petitioner has not submitted new facts to warrant reopening or demonstrated that our prior decision was based on an incorrect application of law or policy. Accordingly, the motions will be dismissed.

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

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