



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

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

In Re: 20811861

Date: JUN. 03, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, describing itself as an import/export business, seeks to temporarily employ the Beneficiary as the corporate president of its new office¹ 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 Texas Service Center denied the petition concluding the record did not establish that: 1) the Beneficiary completed one continuous year of qualifying employment abroad during the three years preceding the filing of the petition and 2) his employment abroad was in a managerial or executive capacity. The Petitioner later filed an appeal that we dismissed on the same grounds. The matter is now before us again on a motion to reopen and 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 motions.²

I. MOTION REQUIREMENTS

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). We may only grant a motion that meets these criteria and establishes eligibility for the requested benefit.

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 We will dismiss the motions on the basis that the Petitioner has not sufficiently established grounds to reopen or reconsider our prior determination that the Beneficiary was not employed in a managerial or executive capacity abroad. Since this identified basis for dismissal is dispositive of the Petitioner's motions, we decline to reach and hereby reserve its motion arguments with respect to whether the Beneficiary was employed abroad for one continuous year in the three preceding the date the petition was filed. *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).

In our prior appeal decision, we agreed with the Director's determination that the Petitioner did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. We pointed to the Beneficiary's foreign duty description and determined that it was generic. We stated that the Petitioner had provided little detail and supporting documentation to substantiate the Beneficiary's performance of qualifying managerial or executive level tasks abroad. Further, we indicated that the Beneficiary's foreign duty description did not include percentages of time he devoted to his different duties. Therefore, we concluded that it did not demonstrate the proportion of time the Beneficiary spent on managerial or executive-level duties as compared to non-qualifying operational tasks. We also noted that the Petitioner did not submit a foreign organizational chart and that it did not provide duty descriptions for the foreign entity's employees. In addition, we discussed the fact that the Petitioner had submitted conflicting assertions as to the members of the foreign employer's organizational structure on the record.

On motion, the Petitioner contends we were mistaken to conclude that the Beneficiary was not employed abroad in an executive capacity and it provides copies of foreign employer invoices, bills of lading, and bank statements dating from 2018 through 2020.³ The Petitioner emphasizes that many of the foreign employer invoices submitted on motion are signed by the Beneficiary in his capacity as president and contends this additional documentation demonstrates the executive-level nature of his employment abroad.⁴

The Petitioner has not submitted sufficient new evidence to demonstrate that our prior decision to dismiss the appeal was incorrect and to establish the Beneficiary's eligibility for the benefit sought. For instance, in dismissing the appeal, we emphasized that the Petitioner did not submit sufficient detail and supporting documentation to substantiate the Beneficiary's asserted primary performance of qualifying executive-level duties, namely, those related to the broad goals and policies of the organization. We noted that the Petitioner did not provide details or documentation to corroborate the Beneficiary's qualifying executive-level duties he abroad, such as the contracts the Beneficiary negotiated, corporate policies he created, financial resources he managed, or marketing expansion he designed. Likewise, we stated that the Petitioner did not articulate or provide supporting documentation to substantiate the Beneficiary's management and oversight of subordinates abroad, expense proposals or funding requests he approved or denied, or final hiring or personnel dismissal issues he decided. The additional evidence submitted on motion does little to address this noted lack of detail and supporting evidence to substantiate the Beneficiary's executive-level duties. The Petitioner must resolve ambiguity 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).

³ The Petitioner indicated on the record that the Beneficiary was employed with the foreign employer from July 1, 2016, until the date the petition was filed on July 1, 2019.

⁴ On motion, the Petitioner only asserts that the Beneficiary was employed in an executive capacity; therefore, we will not analyze whether he was employed in a managerial capacity. "Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

The foreign employer invoices submitted on motion, many signed by the Beneficiary, and the bills of lading from 2018 through 2020 do little to provide additional insight into his executive-level tasks abroad. Similarly, copies of the foreign employer's bank records from this same period, none of which reflect the Beneficiary's performance of executive-level duties, are not probative in demonstrating his claimed qualifying role abroad.

In fact, this evidence and the Petitioner's assertions on motion only leave additional uncertainty as to whether he primarily performed executive-level duties abroad. For instance, the Petitioner states on motion that the Beneficiary was tasked with deciding "what the [foreign employer] chooses to ship," "signing off on *all* [emphasis added] bills of lading," "contracting and securing the relevant parties to each sale," and "facilitating the transfer of goods through [his] comprehensive knowledge of international logistics and shipping operations." Similarly, the Petitioner indicates on motion that the Beneficiary was responsible for deciding "how to secure supply" and "how to ship or move product," emphasizing his responsibility for these duties "every day" or they would risk "having the wrong product distributed by the wrong vendor to the wrong purchaser." The Petitioner further states that the Beneficiary was the "sole individual responsible for the vetting of *each* [emphasis added] sale." In sum, these statements by the Petitioner on motion, along with the numerous invoices signed by the Beneficiary, reflect his substantial involvement in non-qualifying operational level tasks abroad, indicating his responsibility for handling the logistics of *every* sale and shipment completed by the foreign employer.

As we noted in our prior decision, the fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. Sections 101(A)(44)(B) of the Act. The Petitioner does not sufficiently indicate in its descriptions of the Beneficiary's foreign duties what percentage of time he allocated to specific tasks or categories of tasks; namely, how much time he spent handling the logistics of individual sales and shipments abroad, as opposed to being engaged in high level decision making related to general goals and policies.

On motion, the Petitioner does not remedy this material deficiency with a comprehensive duty description reflecting the time he devoted to each of his tasks, nor does it provide details and supporting documentation to substantiate his performance of qualifying executive-level tasks, beyond the provided evidence indicating that he signed most of the foreign employer's invoices. Indeed, the foreign employer invoices provided on motion are more suggestive of the Beneficiary's direct involvement in all of the day-to-day operational matters of the foreign employer, rather his focus on the general goals and policies of the organization and his delegation of non-qualifying operational tasks to claimed subordinates. As such, we are still unable to determine whether a majority of the Beneficiary's duties were non-qualifying administrative or operational tasks or primarily executive-level duties. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

In addition, in dismissing the appeal, we stated that the Petitioner did not submit sufficient evidence to demonstrate the foreign employer's organization structure as of the date the petition was filed, and thus, the Beneficiary's place therein. We further indicated that the Petitioner had provided conflicting descriptions of the foreign employer's organizational structure. On motion, the Petitioner provides no

additional documentary evidence to overcome these material deficiencies; for this reason alone, the motion to reopen should be dismissed.

Instead, on motion, the Petitioner states that the foreign employer's business is "highly contractual" and "not subject to fixed arrangements." The Petitioner further indicates that the foreign employer has "maintained some longer-term employees," but notes that the foreign business involves the hiring of "numerous contractors and cash-offer positions." The Petitioner also asserts that the foreign employer could not "possibly be done by a single individual" and states that the job duties of its employees "can vary depending on available contracts and business needs."

However, the Petitioner's assertions on motion ignore the nature of our review. In determining whether a given beneficiary's foreign duties will be primarily executive, we consider the petitioner's description of the beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees abroad to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business abroad. 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).

As such, at minimum, the Petitioner should have provided a foreign organizational chart, job duties, and other evidence of its foreign employees, and how they relieve the Beneficiary from performing non-qualifying operational tasks, as of the date the petition was filed. Similarly, even if there was some "flux" in the foreign organizational chart and the duties of its employees after this time, the Petitioner could have provided documentary evidence to substantiate the foreign employer's organizational structure at the time of its response to the Director's RFE. Likewise, the same could be said for the time of the appeal, and now, in support of the current motion to reopen. However, in each case, the Petitioner has refused to sufficiently explain and document the foreign employer's organizational structure, the duties of its foreign employees, how they supported the Beneficiary in an executive capacity, and how they relieved him from primarily performing non-qualifying operational tasks. In fact, as we have noted, the additional evidence on motion only further indicates the Beneficiary's primarily involvement in non-qualifying operational tasks abroad related to all its sales and shipments.

For the foregoing reasons, the Petitioner has not submitted new documentary evidence to establish that our prior decision to dismiss its appeal was incorrect and to demonstrate the Beneficiary's eligibility for the requested benefit. 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen must be dismissed.

II. 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.

For similar reasons set forth in the prior section, the Petitioner has not met the requirements of a motion to reconsider. As discussed, in our prior decision we determined that the Beneficiary's foreign duty description was generic and stated that the Petitioner had provided little detail and supporting documentation to substantiate his performance of qualifying executive level tasks abroad. Further, we indicated that the Beneficiary's foreign duty description did not include percentages of time he devoted to his different duties, and therefore, did not demonstrate the proportion of time he spent on executive-level duties as compared to non-qualifying operational tasks. We also noted that the Petitioner did not submit an organizational chart specific to the Beneficiary's foreign employment as of the date the petition was filed, or thereafter, nor did it provide duty descriptions for the foreign entity's employees.

However, in each case, the Petitioner does not articulate why our conclusions were inconsistent with applicable law or policy based on the evidence on the record at the time of appeal. In fact, the Petitioner relies almost exclusively on the new evidence provided on motion, specifically foreign employer invoices, bills of lading, and bank records, which as we discussed at length in the prior section, do not establish that the Beneficiary acted primarily in an executive capacity abroad. As such, the Petitioner has not met the requirements of a motion to reconsider, and it must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.