



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

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

In Re: 16956923

Date: MAY. 17, 2022

Motion on Administrative Appeals Decision

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

The Petitioner seeks to continue the Beneficiary's temporary employment as its president 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 the Beneficiary would be employed in a managerial or executive capacity under the extended petition. We dismissed a subsequent appeal, motion to reconsider, and motion to reopen. The matter is again before us 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. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen and the motion to reconsider.

## **I. LEGAL FRAMEWORK**

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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

## **II. MOTION TO REOPEN**

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

In our prior decision dismissing the Petitioner's motion to reopen, as in our previous decisions, we concluded that the Petitioner did not establish that the Beneficiary qualified as a personnel manager based on his supervision of subordinate supervisors or professionals as claimed.<sup>1</sup> See Section 101(a)(44)(A)(ii) of the Act.<sup>2</sup> More specifically, we discussed several discrepancies on the record that left substantial uncertainty as to the Petitioner's claimed operations and whether the Beneficiary was primarily employed as a personnel manager.

For instance, we pointed to the Beneficiary's duties, noting they indicated the Beneficiary regularly met with the director of marketing and sales to review the marketing strategy and the company's mission. However, we emphasized that the supporting evidence reflected that the claimed director of marketing and sales was not employed and paid by the Petitioner in the second quarter of 2018 when the petition was filed. We therefore stated that it was not clear who would create marketing strategies for the Beneficiary to review or how she would supervise and control the asserted director of marketing and sales as claimed in his duty description.

Further, we indicated that the short-term and long-term objectives of the Petitioner were not clear, as it advertised itself concurrently as an e-commerce company, a food truck operator, and a provider of aerial photography and video services. For example, we stated that submitted photographs reflected the Petitioner's operation of a food truck, while the organizational chart and payroll documents included no employees dedicated to the operation of this business. We also indicated that the Petitioner acknowledged that food trucks were banned in the [REDACTED] Florida, where it claimed to operate the food truck. We further discussed discrepancies in invoices from the Petitioner's claimed accountant, indicating that they did not mention the Beneficiary, reflect his claimed supervision of these contractors, or his asserted weekly oversight of them.

In addition, we concluded that the Petitioner did not establish that the Beneficiary supervised professional subordinates, namely, the claimed marketing and sales position and director of research and development subordinate to him. As noted, we emphasized that the marketing and sales position was not reflected in the submitted state quarterly wage forms corresponding with the date the petition was filed. Further, we concluded that the Petitioner did not clarify how the duties of the subordinate positions required them to have bachelor's degrees. We also discussed the claimed director of research and development, a position the Petitioner claimed was like a research biologist, indicating that that the duties of this asserted position questionably included no biological components. We concluded that although the Petitioner asserted that it planned to market and distribute two medical creams, [REDACTED] and [REDACTED] on the Amazon platform, the record contained no evidence indicating that the director of research and development acted as a research biologist supporting these efforts.<sup>3</sup>

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<sup>1</sup> The Petitioner does not allege that the Beneficiary will be employed as an executive or a function manager.

<sup>2</sup> Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional."<sup>2</sup> *Id.*

<sup>3</sup> The record does not demonstrate that the Petitioner is an active seller on the Amazon platform. Neither [REDACTED] nor [REDACTED] are currently available for sale on Amazon. See <http://www.amazon.com> (last visited May 17, 2022). We also indicated that these products were not for sale on Amazon in our last decision issued in November 2020.

In addition, we concluded that the Petitioner had provided no supporting documentation to corroborate the Beneficiary's personnel authority over, or her delegation of duties to, supervisory or professional subordinates. As such, we determined that the Petitioner has not established that the Beneficiary would not be employed as a personnel manager under an extended petition.

In support of the current motion, the only new evidence the Petitioner submits is an expert opinion from an "independent management consultant" based in Venezuela who provides additional assertions as to the Beneficiary's claimed managerial role in the United States. Further, the Petitioner contends that we were mistaken to conclude that the director of research and development position subordinate to the Beneficiary was not a professional position. The Petitioner points to this employee's master's degree in medical science and notes that he was granted an E-11 nonimmigrant visa as an alien of extraordinary ability. The Petitioner contends that the director of research and development works independently "through the internet" and coordinates with "human and intellectual capital [that] is not in our payroll." The Petitioner also provides additional information on the status of its asserted [redacted] medical cream product, indicating that it is "coordinating its digital marketing in preparation for the product's launch via Amazon and other platforms" and that "it is very plausible that we will be able to launch the [redacted] cream in the first semester [*sic*] of 2021." Lastly, the Petitioner contends that we also acted in error in determining that the distribution manager position subordinate to the Beneficiary was not a supervisory position.

The additional evidence and assertions of the Petitioner on motion do not sufficiently establish that the Beneficiary would have been employed as a personnel manager overseeing subordinate supervisors and professionals in the United States as of the date the petition was filed. The new evidence and contentions submitted by the Petitioner only further highlight the confusion as to its actual business operations in the United States. For instance, the Petitioner emphasizes that it is preparing to launch its asserted [redacted] medical cream through "Amazon and other platforms" and notes that its is "very plausible" this could take place in early 2021. However, in contrast, the submitted expert opinion emphasizes that the Petitioner's development of a "technological platform for electronic procurement and logistical services" between the United States and Latin America to "become a leader in e-commerce." Further, as we discussed in our previous decisions, in support of the petition the Petitioner primarily pointed to its operation of a food truck in Florida.

The Petitioner's conflicting assertions as to its business operations leaves substantial uncertainty as to its whether its business operations were sufficient to support the Beneficiary as a personnel manager as of the date the petition was filed, as well as through to the date of this adjudication. 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, the focus of our analysis must be the Petitioner's operations as to the date the petition was filed in May 2018. Therefore, the Petitioner's proposed development in 2021 or other future development of a "technological platform for electronic procurement and logistical services" is not relevant to establishing the Beneficiary's eligibility for the benefit sought.

The Petitioner provides little objective evidence to overcome this substantial uncertainty as to its operations and the Beneficiary's personnel manager role. For example, despite the Beneficiary being employed as a claimed personnel manager in the United States with the Petitioner dating back to 2015,

there is no supporting evidence to substantiate her acting as a personnel manager, such as documentation reflecting her oversight of subordinates, her delegating duties to them, or her performing personnel actions with respect to the claimed director of research and development and the distribution manager emphasized in support of this motion. In fact, the Petitioner has not provided documentation to substantiate the employment of the Beneficiary's asserted subordinates since the fourth quarter of 2017, nor has it provided evidence of its revenue or financial position since its 2016 IRS Form 1120, U.S. Income Tax Return.<sup>4</sup> The Petitioner has also chosen to simply ignore our observation in the prior decision that the marketing and sales position was not reflected in submitted state quarterly wage forms corresponding with the date the petition was filed, a position highly emphasized in her duty description. Likewise, as discussed in our prior decision, there is no evidence to support the Petitioner's engagement of independent contractors, who it asserts work with the claimed director of research and development, including "a staff of 4 to 6 full-time professionals in the fields of Microbiology and Infectiology, Economics, Administration and Logistics" discussed in the expert opinion provided on motion. The Petitioner must resolve inconsistencies 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).

The expert opinion provided on motion only further highlights the lack of detail and supporting documentation to substantiate the Beneficiary's role. For instance, the expert opinion discusses the Beneficiary's duties and emphasizes that she sets policies and procedures, finalizes contracts and agreements, works with customers and suppliers, represents the company privately and publicly, plans budgets and projects, and formulates and directs promotional pricing policies. Further, the expert opinion points to the Beneficiary coordinating "the transformation of information and knowledge flows into valid market solutions," approving weekly sales budget, prices, applying promotional prices, solving the hiring needs of high-level consultants, coordinating with the team of directors and external consultants, coordinating the renewal of minimum inventories, and optimizing the prices and the "quality ratio." First, it is not clear to which business these claimed managerial tasks are being directed, whether towards its previously discussed, and now ignored, food truck, its claimed creation of a platform for electronic procurement and logistical services, or its asserted development of a medical cream. Further, in each case, there is little detail or supporting documentation to corroborate the Beneficiary's performance of these asserted managerial tasks, such as the specific policies and procedures she set, agreements or budgets she finalized, projects she oversaw, or promotional policies she dictated. Likewise, there is few specifics and little supporting documentation to substantiate the consultants she hired or coordinated with, the information she parlayed into "valid market solutions," the weekly sales budgets and prices she coordinated, the minimum inventories and guarantee policies she oversaw, or the "quality ratio" she optimized.

Again, the lack of detail and supporting documentation as to the Beneficiary's managerial duties is notable, given that it asserts that she has acted in the role in the United States since 2015. In addition, there is little supporting evidence to demonstrate her performance of these duties as of the date the petition was filed in May 2018. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial 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).

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<sup>4</sup> The current motion was filed in December 2020.

As such, the expert opinion provided on motion provides little additional insight and does not overcome the deficiencies discussed at length in our prior decisions. If the Petitioner establishes that the position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside its other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Id.* Furthermore, merely repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *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).

In conclusion, the Petitioner has not stated new facts, supported by documentary evidence, demonstrating that the Beneficiary would be employed in a managerial capacity under the extended petition as defined in section 101(a)(44)(A) of the Act. *See* 8 C.F.R. § 103.5(a)(2). For this reason, we will dismiss the motion to reopen.

### III. MOTION TO RECONSIDER

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).

As discussed at length in the prior section of this decision, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy. The Petitioner, as noted, emphasizes that we were mistaken to conclude that the Beneficiary's subordinate director of research and development was not a professional subordinate and that the claimed distribution manager was not a supervisory employee. However, the Petitioner's assertions ignore the lack of supporting evidence to demonstrate that the Beneficiary acted in a personnel manager capacity, evidence which it has had numerous opportunities to submit. As discussed, the record includes little documentation to support a conclusion that the Beneficiary was employed as a personnel manager when the petition was filed in May 2018.<sup>5</sup> Further, the Petitioner did not address the fact that its claimed sales and

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<sup>5</sup> We also note that there is nothing preventing the Petitioner from filing a new petition substantiating his current managerial or executive capacity, considering that more than two and a half years have passed between the date the petition was filed and the latest set of motions were filed. A petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

marketing director was not reflected in state quarterly wage reports provided as of the date the petition was filed.

The Petitioner also continues to provide confusing assertions related to its business operations and emphasizes its future development of a medical cream and an electronic commerce platform, both of which have not been developed years after the date the petition was filed. As noted, the Petitioner's future development years after the petition was filed is not relevant to whether the Beneficiary was acting, or would act, as a personnel manager as of the date the petition was filed. In fact, these assertions of future development leave only further uncertainty, given that the Petitioner first emphasized its operation of a food truck in Florida in support of the petition, a business now not discussed at all on motion. In sum, as noted in our prior decision, the Petitioner has not provided sufficient supporting documentation to substantiate that the Beneficiary would act as a personnel manager under an extended petition. Further, the Petitioner has not properly articulated how this determination was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of that decision. Therefore, the motion to reconsider must be dismissed.

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

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