



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

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

In Re: 27918151

Date: JULY 27, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a high-rise window cleaning service, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) and vice president under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that it would employ the Beneficiary in the United States in an executive capacity. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii).

On motion, the Petitioner submits 2022 tax documents, a revised job description for the Beneficiary's proposed position, and documents relating to the operation of the business. The Petitioner asserts that these new facts establish eligibility, by addressing previously identified deficiencies. The Petitioner contests the correctness of our prior decision.

In our appellate decision, we stated that the Petitioner's response to a request for evidence (RFE) from the Director "did not include the requested evidence of payments made to the Petitioner's claimed personnel in 2022." The Petitioner states, on motion, the Director did not broadly request evidence of wages paid in 2022. Rather, the Director requested specific types of documentation, which were either

inapplicable or unavailable when the Petitioner had to respond to the RFE. We acknowledge that the RFE response was due before the end of 2022, and therefore year-end tax documents would not have been available. Nevertheless, it is evident from the range of documentation requested that the Director sought evidence of payments to subordinates. The Director had requested “State Quarterly Wage Reports for the 1st, and 2nd quarter of 2022,” the Petitioner’s “payroll summary, and Forms W-2, W-3, and 1099-MISC showing wages paid to all employees under the beneficiary’s direction.”

The Petitioner observes, on motion, that bank statements submitted with the RFE response show individual payments to contractors in 2022. But the Petitioner submitted those bank statements as evidence of its business activity, not as evidence of payment of subordinates. The bank statements show electronic payments to several recipients, generally identified only by their first names, and not all of these individuals are named on the Petitioner’s organizational chart.

Newly submitted IRS Forms 1099-NEC, Nonemployee Compensation, show payments to six contractors during 2022:

President	\$32,077	Window Cleaner 1	\$25,221
Supervisor	\$33,110	Window Cleaner 2	\$21,000
Operations Assistant	\$11,296 <sup>1</sup>	Window Cleaner 3	\$9,260

To establish the Beneficiary’s discretionary authority and delegation of lower-level tasks, the Petitioner submits copies of email messages, contracts, and related documents.

We did not dispute the presence of subordinate staff, or the claim that the Beneficiary would have some degree of discretionary authority over the company; we acknowledged he would “occupy [a] senior position.” While we noted the lack of evidence of subordinates’ compensation in 2022, this deficiency in the evidence was not a principal basis for dismissal of the appeal. Rather, we discussed the Petitioner’s staffing in the context of whether the subordinate workers permit the Beneficiary to perform primarily executive duties. We will further explore this issue in the discussion of the motion to reconsider, below.

The newly submitted evidence and information does not show proper cause to reopen the proceeding, and therefore we will dismiss the motion to reopen.

The Petitioner contends that, in our appellate decision, we improperly cited court decisions that concern claims regarding a managerial capacity, whereas the Petitioner here seeks to employ the Beneficiary in an executive capacity. We cited the cases not as binding case law that closely matches the fact pattern before us, but as persuasive authority in reference to a particular point that applies equally to managerial and executive capacities. The statutory definitions of both terms require a given beneficiary’s duties to be either “primarily” managerial or “primarily” executive. *See* section 101(a)(32)(A) and (B) of the Act. In *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006), the court held: “the facts in the record do not compel the conclusion that [the beneficiary] was primarily engaged in managerial duties, as opposed to ordinary operational activities alongside Family’s five other employees.” *Id.* at 1316. While the decision in *Systonics Corp. v. INS*, 153 F. Supp. 2d 7 (D.D.C.

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<sup>1</sup> The Petitioner acknowledges, on motion, that it had previously claimed that the operations assistant earns \$24,000 per year, but that individual earned substantially less in both 2021 (\$18,900) and 2022 (\$11,296).

2001) relied on factors that are not applicable to the case now before us, it included the relevant observation that a company's small size could be one of several factors to consider when determining the nature of a beneficiary's duties. *See id.* at 15.

The Petitioner had previously cited another case, *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988), to support its assertion that a business's small size is not, by itself, sufficient grounds for denial of the petition. In our appellate decision, we disagreed with the Petitioner's assertion that the present case is similar to *Mars Jewelers*. On motion, the Petitioner maintains that *Mars Jewelers* is applicable, and the Petitioner states that its small size "is, in our opinion, the main cause of the denial in this case." The Petitioner offers no detailed argument to support this opinion. In our appellate decision, we discussed the duties and responsibilities of the Beneficiary's intended subordinates, but the *size* of the company was not, itself, a principal factor in the dismissal. Furthermore, the 1988 *Mars Jewelers* decision predates a key amendment to the Act. In language added by section 123 of the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 4995), section 101(a)(44)(C) of the Act allows "staffing levels" to be "used as a factor in determining whether an individual is acting in a managerial or executive capacity," taking into account the employer's "reasonable needs."

In our appellate decision, we stated: "it is appropriate to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company." On motion, the Petitioner objects to the term "absence of employees," because the Petitioner has lower-level workers (contractors rather than employees) who perform various operational tasks. We did not state that the Petitioner has *no* support staff. Rather, we concluded that the Petitioner had not shown that its staff is sufficient to allow the Beneficiary to work in a *primarily* executive capacity.

The Petitioner has not shown the Beneficiary's intended duties to be *primarily* executive in nature. In our dismissal notice, we stated:

[T]he Petitioner indicated that the Beneficiary would be directly dealing with potential clients and partners and attending conferences and seminars to generate new contacts and business opportunities. . . . [I]t is unclear who, other than the Beneficiary, would be responsible for operational activities associated with the sales and marketing of the Petitioner's services. Although the Petitioner indicates its intent to hire a marketing manager in the future, the company does not claim that it currently employs any sales or marketing staff. Therefore, we cannot determine to what extent this responsibility would require the Beneficiary to perform non-executive tasks.

The Petitioner submits a new job description intended to show that the Beneficiary will "[o]versee all aspects of the operation," including "marketing, development, finance, and customer service." The record does not establish who would perform the non-executive tasks relating to those functions. The Petitioner had previously asserted that the Beneficiary would spend a significant amount of time "analyz[ing] opportunities to introduce [new] services" and, with the president, developing and implementing "the new sales strategy." As we observed in our prior decision, the Petitioner has no subordinate sales or marketing staff, and therefore it appears that the Beneficiary would perform the sales function himself, rather than direct the management of that function.

In response to our prior observation that the Beneficiary himself would apparently perform marketing duties, the Petitioner states: “the Supervisor and the operations assistant . . . are the ones who mainly manage the operational activities of the company.” The job descriptions of the operations assistant and supervisor do not include sales and marketing duties. The Petitioner also stated: “It was also indicated that a marketing manager would be hired later as the company expands.” We previously acknowledged the Petitioner’s plans to hire additional workers in 2023 and 2024, including a marketing manager and administrative assistant, but 8 C.F.R. § 103.2(b)(1) requires a petitioner to meet all eligibility requirements at the time of filing the petition – in this case, July 2022. The “new office” provisions at 8 C.F.R. § 214.2(l)(3)(v) allow for consideration of expected near-term growth and hiring, but the new office provisions apply only to employers that have been doing business for less than one year. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F). The Petitioner, established in 2014, had been doing business for years before the 2022 filing date.

An executive capacity involves more than high-level control over all or part of an organization. The statutory and regulatory definition of “executive capacity” requires the executive to direct the management of the organization or a major component or function thereof. Section 101(a)(44)(B)(i) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C)(I). An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. This control could either take the form of direct supervision of those managers or executives or could be more indirect under some circumstances. *See generally* 2 *USCIS Policy Manual* L.6(D), <https://www.uscis.gov/policy-manual>.

There are two positions immediately subordinate to the Beneficiary’s intended position: a first-line supervisor of window cleaners, and an operations assistant who, at the time of filing, received compensation commensurate with part-time work. The Petitioner has not established that these two individuals are “managerial or lower-level executive employees,” such that the Beneficiary’s authority over them would constitute directing the management of the organization or a major component or a major function thereof. The only other individual named above the supervisory level is the company’s president. The Petitioner has asserted that the president would not be subordinate to the Beneficiary; this was the Petitioner’s explanation for the president’s omission from an organizational chart showing the Beneficiary’s subordinates. Therefore, the Beneficiary would not direct the president’s management of the organization. Statutorily, we must consider the reasonable needs of the petitioning organization, but the Petitioner has not established that its reasonable needs require two levels of executive authority – a president and a CEO/vice president – to oversee the work of the lower-level staff identified in the record.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

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

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