U.S. Citizenship and Immigration Services

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

In Re: 18850741

Date: AUG. 4, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a Venezuelan restaurant, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 record did not establish, as required, that the Beneficiary was employed abroad, and would be employed in the United States, in a qualifying capacity. We dismissed the Petitioner's appeal from that decision, and also dismissed the Petitioner's combined motion to reopen and reconsider the appellate decision. The matter is now before us on a second combined motion to reopen and 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 combined motion.

## I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from December 5, 2017, until December 4, 2018. 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 from the date of approval of the petition to support an executive or managerial position.

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 reopening or 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. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

## III. MOTION TO RECONSIDER

The Petitioner filed the extension petition in November 2018. The Director denied the petition in March 2019. The Petitioner appealed that decision in April 2019, and we dismissed the appeal in October 2019. The Petitioner filed its first combined motion in November 2019, and we dismissed that motion in July 2020.

Initial consideration of this motion is limited to whether we erred in our July 2020 decision, in which we dismissed the Petitioner's November 2019 motion and made the following determinations:

- A newly-submitted job description for the Beneficiary's U.S. position conflicts with prior versions, and includes several apparently non-managerial responsibilities;
- The Petitioner effectively forfeited its opportunity to submit evidence regarding the duties of the Beneficiary's foreign subordinates, because the Petitioner did not submit that evidence initially or in response to a request for evidence; and
- The Petitioner's November 2019 motion did not address other evidentiary deficiencies and inconsistencies that we described in our October 2019 dismissal notice.

### A. Conflicting U.S. Job Descriptions

In dismissing the Petitioner's first motion, we acknowledged the Petitioner's submission of a new job description for the Beneficiary. We concluded that this description listed new duties and provided a

different breakdown of the time that the Beneficiary spends on each of various responsibilities, compared to the earlier job description. We added that "the Petitioner's motion describes proposed job duties totaling more than 100% of the Beneficiary's time."

We concluded: "These discrepancies cast doubt on the true job duties of the offered position and the amounts of time the Beneficiary would spend on them." We also noted that, because the Petitioner must meet all eligibility requirements at the time of filing, new changes to the Beneficiary's responsibilities could not overcome the denial of the petition. Even then, we concluded that "[m]any of the new proposed duties . . . do not appear to involve supervising and controlling the work of other supervisory, professional, or managerial employees," and therefore did not establish that the Beneficiary works in a managerial capacity.

In the current motion, the Petitioner submits the earlier version of the Beneficiary's claimed job description. The Petitioner does not explain why, or even acknowledge that, the description in the first motion contained different information. The Petitioner's reversion to this job description does not establish an error of fact, law, or policy in our prior decision, and as such it is not a basis for reconsideration.

B. Duties of Foreign Subordinates

In our appellate decision, we stated that "the Petitioner did not provide a summary of the job duties of the Beneficiary's subordinates in Venezuela," even though the Director had requested that information before denying the petition. The purported lack of that evidence was cited as one basis, among others, for dismissing both the appeal and the first combined motion.

Review of the record shows that our prior determination was not correct. The Petitioner's response to a request for evidence included capsule job descriptions for four of the subordinate positions. The Director acknowledged that submission in the denial notice. Since then, the Petitioner has correctly noted that it submitted this information. Nevertheless, for the reasons discussed below, we conclude that more timely consideration of this information would not have resulted in approval of the petition.

The Petitioner claims that the Beneficiary worked overseas in an executive capacity for its foreign parent company (an import-export company based in Venezuela). "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.

In the request for evidence, the Director stated that, for the Beneficiary to qualify as an executive, the Petitioner would need to show that the Beneficiary had authority over managers at the foreign company. The Director requested job descriptions that described the subordinates' daily duties and stated what tasks they performed to fulfill those duties, the amount of time devoted to those tasks, and their qualifications for their respective positions.

In response, the Petitioner provided capsule job descriptions for the foreign entity's vice president, general manager, managing director, and sales manager, and listed the college degrees each of them held. For example, one of these descriptions reads as follows:

> General Manager – Degree in Dentistry
> - Receive direction and supervision from the Beneficiary regarding the general management of the company;
> - Supervise the Managing Director and the Sales Manager and report directly to the Beneficiary;
> - Supervise the legal and administrative operations for the company;
> - Oversee contractual negotiations with suppliers.
>
> This position reported directly to the President/Beneficiary.

In the denial notice, the Director acknowledged the submission of these descriptions, but determined that they lacked sufficient details to show that those positions were managerial (and thereby elevated the Beneficiary to a primarily executive capacity). The Director stated that the "description of the direct subordinates' duties includes [such words as]: 'Direct,' 'negotiat[e] contracts,' 'supervise,' and 'oversee.' [The Petitioner] did not specify the means by which the subordinates performed these tasks."

On appeal, the Petitioner did not acknowledge or rebut the Director's conclusions about the foreign subordinates' job descriptions. In both of its subsequent motions, the Petitioner has resubmitted those same descriptions in essentially the same form, without addressing or overcoming those conclusions, or establishing that the missing information is not relevant to the matter under discussion.

We incorrectly stated that the job descriptions were entirely absent from the record, and should have rectified this error in the context of the first motion when the Petitioner correctly stated that the response to the request for evidence included those descriptions. But the Petitioner did not address the deficiencies in this information when given the opportunity. Furthermore, the Director cited other reasons for concluding that the Petitioner had not established that the Beneficiary served in an executive capacity abroad, and other grounds for denying the petition (relating to the Beneficiary's U.S. employment). Therefore, even if we had acknowledged the Petitioner's submission of the employee job duties within the context of our original decision dismissing the appeal, this one issue would not have altered our decision to dismiss the appeal or the subsequent motion.

For the above reasons, our previous error regarding the foreign subordinates' job descriptions does not amount to good cause for reconsideration.

C. Other Deficiencies and Inconsistencies

In our October 2019 dismissal notice, we noted inconsistent and deficient claims regarding the organizational structures of both the foreign employer and the petitioning U.S. entity. When we dismissed the Petitioner's first motion in July 2020, we stated that "neither the Petitioner's motion to reopen nor its motion to reconsider address [these] other evidentiary deficiencies."

In its latest motion, the Petitioner does not dispute this determination or show that it addressed those deficiencies in its first motion.

For the reasons discussed above, the Petitioner has not established that the error in one limited area of our prior decision prevented the approval of an otherwise meritorious petition.

## IV. MOTION TO REOPEN

The purpose of a motion to reopen is to introduce new facts into the record. Repetition of prior claims and resubmission of evidence already in the record are not grounds for reopening the proceeding. Several of the exhibits submitted on motion, however, duplicate prior submissions, and as such they do not warrant reopening the proceeding.

Other exhibits are new to the record, but do not substantively affect the outcome of the petition. For instance, the Petitioner submits copies of academic diplomas earned by other employees in the United States. The Petitioner had previously identified these academic degrees, and the submission of the diplomas adds no substantial new information to the record. Our July 2020 decision did not cite the lack of documentation of those degrees as a basis for dismissal.

Still other new exhibits reflect various actions that the Beneficiary undertook while working for the petitioning entity, such as signing leases on equipment and, more recently, applying for a loan under the Paycheck Protection Program. These materials attest to the level of the Beneficiary's authority within the petitioning company, but we did not dispute that the Beneficiary holds a leadership position with that company. Rather, we determined that the details provided about that position were neither consistent nor sufficient to establish that the Beneficiary's position with the company is *primarily* managerial as the statute and regulations require. The newly submitted materials do not address or rebut that determination, and therefore the Petitioner has not shown good cause for reopening the proceeding.

## V. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration.

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

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