



U.S. Citizenship
and Immigration
Services

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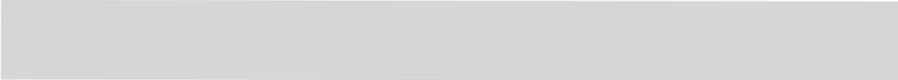


DATE: **JUN 30 2015**

FILE #: [REDACTED]

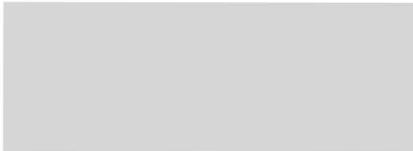
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and we dismissed the appeal. The matter is again before us on a motion to reconsider. We will dismiss the motion.

The petitioner, a bakery, seeks to employ the beneficiary in the United States as its president. The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on February 14, 2013, seeking to classify the beneficiary as an employment-based immigrant under section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director denied the petition on January 6, 2014, concluding that the petitioner had not established that the beneficiary's duties have been, or will be, primarily managerial or executive in nature. We reviewed the record of proceeding and determined that it did not contain sufficient evidence to establish that the petitioner would employ the beneficiary as a manager or executive, or that the beneficiary had previously worked in such a capacity abroad. We dismissed the petitioner's appeal from that decision on October 27, 2014, with a comprehensive analysis of the director's decision.

I. Motion Requirements

A. Overarching Requirement for Motions by a Petitioner

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action. Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Augmenting these provisions is the related instruction at Part 3 of the Form I-290B, which states that a motion to reconsider "must be supported by citations to appropriate statutes, regulations, or precedent decisions."

II. Discussion and Analysis

The submission on motion consists of a two-page brief and a copy of the AAO's prior dismissal notice.

A. Dismissal of the Motion to Reconsider

The petitioner's motion rests on the assertion that the AAO erred by applying too strict a standard of proof, and by overlooking certain evidence of the petitioner's business activities.

Section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), provides:

(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, we must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if we have some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing “more likely than not” as a greater than 50 percent probability of something occurring).

The petitioner cites *Chawathe* and states:

it appears that a higher standard was applied. Indeed, the decision does not state what standard was applied, nor why the evidence did not meet the standard. . . . The decision uses such terms as “general” or “nonspecific.” However, the decision quotes some very specific duties from the materials submitted. . . .

[Y]our decision . . . finds that the description of the beneficiary’s duties abroad of “oversees the general managers of various bakeries, reviewing the financial reports, sales reports, project and loss reports, recommendations for new products, advertising campaigns” (page 6) is “vague and nonspecific.[”] We respectfully disagree. The nature of the business is bakeries – the duties are reasonable executive decisions necessary for the success and growth of the company.”

The petitioner, on motion, does not explain how the quoted information consists of “very specific duties” rather than broad categories. Stating that “the duties are reasonable” does not rebut our finding that the description lacked detail.

The petitioner states: “There is not one scintilla of evidence that the beneficiary bakes bread, supervises the employees or is otherwise involved in the day-to-day baking and selling of bread. Instead, evidence has been presented that the beneficiary has turned an unprofitable operation into a profitable one.” This assertion presumes that the two functions are mutually exclusive, which is not the case.

In our dismissal notice, we stated: “The petitioner also provided a list of new clients and prospective clients of the petitioner’s bakery. However, the petitioner did not submit any contracts, agreements or invoices between the petitioner and the new clients.” On motion, the petitioner states that our “decision overlooks evidence of negotiations with [REDACTED] related to the continued growth of the petitioner due to the beneficiary’s on-going activities.” The petitioner contends that “the production and sale of baked goods . . . is not an industry that normally involves long-term sales contracts.” The petitioner also asserts that we failed to consider evidence that the company became profitable under the beneficiary’s leadership.

Our previous decision contained no finding that the beneficiary lacked high-level control over the bakeries, and therefore was not responsible for their improved business practices. Rather, we found “the evidence does not support a finding that the beneficiary allocated his time *primarily* to the performance of tasks that are within a qualifying managerial or executive capacity” (emphasis added).

The asserted absence of evidence that the beneficiary personally baked bread, for instance, does not establish that the petitioner’s claims are more likely than not to be true. The adjudication does not begin with a presumption in the petitioner’s favor that USCIS must overcome in order to deny the petition. Our decision contained a number of particular findings that the petitioner does not address on motion, such as the observation that “the director specifically requested additional information of the beneficiary’s subordinate employees such as job descriptions for each employee. Instead, the petitioner resubmitted the same organizational chart and did not provide any evidence of the foreign company’s employees except for a few job titles and names.” It was for this reason, and not because of derogatory or countervailing evidence, that we found the petitioner had not met its burden of proof.

With respect to the claim on motion that the beneficiary’s field “is not an industry that normally involves long-term sales contracts,” our decision contained no specific reference to “long-term sales contracts.” The petitioner has, however, repeatedly referenced “contracts” in the context of the beneficiary’s past and intended future duties, stating that he “reviews purchase history reports and issues decisions on suppliers, including reviewing proposed contracts for supplies, as well as reviewing and approving proposed contracts with major retailers and restaurants in Mexico,” and that he “will review present purchasing protocols by visiting vendors and inspecting supplies as

agreed under present contracts. He will review and analyze all present supply and sales contracts for possible re-negotiation.”

We conclude that the motion meets some, but not all, of the requirements of a motion to reconsider. The petitioner stated the reasons for reconsideration and cited a pertinent precedent decision relating to the standard of proof. The petitioner also sought to establish that the decision was incorrect, but the petitioner did not persuasively establish that we held the petitioner to too high a standard of proof, or that we erred in our findings regarding the nature of the beneficiary’s past and intended future duties. Accordingly, we must dismiss the motion to reconsider as required by 8 C.F.R. § 103.5(a)(4).

III. Conclusion

Unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and our previous decision will not be disturbed.

ORDER: The motion is dismissed.