



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

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

MATTER OF S-A-A-S- CORP.

DATE: JULY 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an automobile dealership which states that it also conducts market research, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Texas Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity. The Petitioner appealed the decision, and we summarily dismissed the appeal. The Petitioner filed a motion to reopen, which we denied. The Petitioner then filed a motion to reconsider, after which we remanded the matter to the Director for a new decision. The Director issued a Request for Evidence, and subsequently denied the petition for abandonment. The Petitioner filed a motion to reopen. We reviewed the matter on certification, and affirmed the denial of the petition on the merits. The Petitioner then filed another motion to reopen, which we denied.

The matter is now before us on a motion to reconsider. On motion, counsel for the Petitioner asserts that we erred by misunderstanding the nature of the Petitioner's business. We will deny the motion.

#### I. MOTION REQUIREMENTS

##### A. Overarching Requirement for Motions by a Petitioner

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that "the official having jurisdiction may, for proper cause shown, reopen the proceeding." This provision limits our authority to reopen the proceeding to instances where "proper cause" has been shown for such action. Thus, to merit reopening, the submission must not only meet the formal requirements for filing, but the petitioner must also show proper cause for granting the motion.

##### 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.

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings.<sup>1</sup> Rather, any “arguments” that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed earlier by the affected party.<sup>2</sup> Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision.<sup>3</sup>

## II. DISCUSSION

On motion, the Petitioner has not claimed any errors of law or USCIS policy, and therefore has not cited any supporting precedent decisions. Instead, the motion rests on the contention that we based our prior decision on incorrect facts, and that we relied on assumptions contrary to the evidence in the record at the time of our decision.

Here, we will not discuss the full merits of the petition or all of the specific factors leading to the denial of the petition or the dismissal of the appeal. Those details appear in our earlier decisions dated July 30, 2015, and February 24, 2016. Our conclusion that the Beneficiary did not qualify as a manager or executive at the time of filing on November 21, 2011, rested in part on this conclusion: “With no commissioned sales staff in 2011, someone else must have handled sales duties. . . . [I]t is not apparent that anyone other than the Beneficiary himself remained to perform that function.” The purpose of the latest motion is to dispute this conclusion.

On motion, counsel states that the Petitioner is “a wholesaler of automobiles,” not a dealership, and therefore “[i]t would appear that the AAO misunderstood the sales function of the petitioner’s organization.” At earlier stages in the proceeding, the Petitioner had indicated that it exports automobiles and supplies cars to dealers in California and New Jersey, consistent with wholesale

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<sup>1</sup> See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) (“Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion.”).

<sup>2</sup> *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); see also *Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013).

<sup>3</sup> See *Matter of O-S-G-*, 24 I&N Dec. at 60.

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activity. Counsel states that our previous decision “fails to recognize that the large majority of the sales of the cars were performed by the dealerships that the petitioner supplied. Therefore, the petitioner did not rely on its own commissioned sales staff.”

Counsel acknowledges that past submissions have referred to “sales staff,” but asserts that we “misunderstood what petitioner viewed as its sales force in 2011. The petitioner relied on outside sales people to actually sell the cars. . . . This made up the ‘sales staff’ to which the petitioner has referred.”

The above assertion comes from counsel, rather than directly from an authorized official of the petitioning entity. The unsupported assertions of counsel do not constitute evidence.<sup>4</sup> Therefore, we must determine whether the evidence of record supports counsel’s new claim on motion.

We find that the record does not support this claim. The Petitioner has consistently claimed its own “sales staff,” and it has documented small post-2011 payments to one [REDACTED] whom the Petitioner identified as an independent contractor who did sales work for the company.

In a letter dated November 18, 2011, by [REDACTED] identified as the Petitioner’s chief financial officer, stated that the company provides cars and marketing services to various dealerships. But [REDACTED] also stated that “the company has . . . maintained its NJ Department of Motor Vehicles Used Car Dealership license,” and that one of the company’s goals was “to enhance our retail sales operation in New Jersey.”

Apart from [REDACTED] letter, the Petitioner’s initial submission included other evidence of retail activity, including a copy of the used car dealership license mentioned above (issued March 14, 2011), and a [REDACTED] dated March 10, 2009, granting the Petitioner’s application for a zoning certificate “for its auto brokerage business including the purchase and sale of motor vehicles on a wholesale and retail basis.”

Our references to commissioned sales personnel did not arise from any misunderstanding on our part. Rather, the Petitioner claimed, from the outset, to have a “retail sales operation” with commissioned sales staff at the time it filed the petition. Also, whether the sales were wholesale or retail, someone at the company had to be facilitating those sales, taking the necessary steps to collect payment and transfer ownership of the vehicles. [REDACTED] stated, in his November 18, 2011 letter: “With regard to personnel . . . we have . . . two sales agents (commission based). . . .”

The reference to “sales agents” is consistent with the Petitioner’s organizational chart, which referred to a “Vehicle Procurement and Sales” department that employed “Various Scouts and Sales Staff / Agents,” with no indication that these individuals were actually employed by other automobile dealerships.

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<sup>4</sup> See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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Counsel refers, on motion, to a letter dated June 13, 2012, in which [REDACTED] provided job descriptions of the Petitioner's employees. In that letter, [REDACTED] stated that the company's staff included "Two Sales Staff members" who meet with the Beneficiary "[o]n a daily basis." This statement is not compatible with counsel's claim, on motion, that the phrase "sales staff" actually referred to the sales personnel at many different car dealerships.

The above evidence confirms that the Petitioner has consistently claimed to employ a "sales staff," rather than rely upon the sales staff employed by other dealerships.

For the above reasons, we find that the Petitioner has not shown cause for reconsideration of our prior decision. The Petitioner has identified no errors of law or policy, and the record does not support the claim regarding errors of fact. The motion does not establish proper cause to reconsider our decision of February 24, 2016.

### III. CONCLUSION

The motion will be denied for the above stated reasons. 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.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of S-A-A-S- Corp.*, ID# 18102 (AAO July 21, 2016)