



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

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

MATTER OF C-, INC.

DATE: MAY 2, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an exporter of weather instruments, seeks to permanently employ the Beneficiary as its general manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) § 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: (1) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad in a managerial or executive capacity. We dismissed the Petitioner's appeal of that decision.

The matter is now before us on a motion to reconsider. On motion, the Petitioner asserts that we erred by issuing a decision that was factually incorrect, arbitrary, and capricious.

Upon review, we will deny the motion.

I. MOTION REQUIREMENTS

A. Overarching Requirements for a Motion

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting 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: "[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision."

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, Notice of Appeal or Motion, that is properly completed and signed, and accompanied by the correct fee), but the Petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "Processing motions in proceedings before the Service," "[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.

These provisions are augmented by the related instruction at Part 4 of the Form I-290B, which states: “**Motion to Reconsider:** The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of 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). However, 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 that were decided in error or overlooked. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

II. DISCUSSION

Upon review, and for the reasons discussed below, we will deny the motion to reconsider.

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on August 5, 2013. The Director denied the petition on February 13, 2015, concluding that the Petitioner did not establish that the Beneficiary was employed abroad, and would be employed in the United States, in a managerial or executive capacity as defined at section 101(a)(44) of the Act, and 8 C.F.R. § 204.5(j)(2). We dismissed the appeal on October 19, 2015.

The Petitioner’s motion to reconsider includes the Form I-290B, Notice of Appeal or Motion, a brief, and a copy of our previous decision. In its brief, the Petitioner states that our decision was “arbitrary and capricious” and “was incorrect based on the evidence of record at the time the decision was made.” The Petitioner states that, in our appellate decision, we “acknowledged that the petitioner . . . submitted a separate ‘description of duties and responsibilities’ for the Beneficiary’s position.” The Petitioner states:

[W]e disagreed with the AAO finding because the petitioner’s submitted evidence contradicts the AAO conclusion. This might be an Administrative Appeals Office oversight because contrary to the AAO finding the evidence shows that the Petitioner

employed the Beneficiary in a qualifying managerial capacity as of the date the petition was filed. . . . In fact . . . , the AAO acknowledged that the Petitioner submitted the beneficiary's duties. Thus, the AAO's finding should be reconsidered and reversed because the same is wrong.

A review of our previous decision confirms that we did not dismiss the Petitioner's appeal because the record lacked a job description for the Beneficiary. Therefore, the Petitioner's observation that it submitted job descriptions does not show that our prior decision was in error.

The submission of a job description is not sufficient to secure approval of the petition. USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the beneficiary's job description, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Further, the Petitioner's description of the Beneficiary's duties must demonstrate that the Beneficiary's duties were, and will be, primarily managerial or executive in nature. In our dismissal notice, we found the submitted job descriptions in the record to be vague and conflicting. The Petitioner, on motion, disagrees with this finding, but does not show how our finding was in error. The Petitioner states that the Beneficiary "also had the role of general manager of the oversea[s] company," but the Beneficiary's former job title is not, on its face, persuasive evidence that he served in a managerial or executive capacity. The Petitioner's claims with respect to the Beneficiary's foreign position are limited to this statement regarding his job title.

The Petitioner states that our "decision must be reconsidered because [the Beneficiary] meets the criteria of managerial position [*sic*]." The Petitioner states that our prior decision was incorrect, but does not specify how we incorrectly applied the relevant law or policy to the facts provided. A general allegation of unspecified error is not grounds for reconsideration.

In our decision, we stated:

Section 101(a)(44)(C) of the Act . . . specifically allows USCIS to use "staffing levels . . . as a factor in determining whether an individual is acting in a managerial or executive capacity," provided that it "take[s] into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function."

On motion, the Petitioner states that, in considering its staffing levels, we failed to take into account provisions allowing for "'**functional managers**' – those who are responsible for an essential function of a business, even if they don't directly manage subordinates."

The term "function manager" applies generally when a beneficiary's managerial capacity derives not from supervising the work of a subordinate staff but instead from managing an "essential function"

within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The Petitioner did not initially claim that the Beneficiary would serve as a function manager. Rather, the Petitioner's initial description of the Beneficiary's position indicated that he would "serve . . . in an executive capacity."

In our prior decision, we acknowledged the Petitioner's statement, on appeal, that "the corporation uses independent contractors to perform all its necessary functions," such as "customs brokering, freight forwarding, etc.," and its claim that the Beneficiary is responsible for oversight of these functions. We found, however, that the Petitioner had not documented its use of contractors in this way. We stated: "The only concrete example documented on appeal is that the Petitioner has used an accounting service to prepare its financial and tax documents." The assertion that the Beneficiary delegates "necessary functions" to unspecified third parties is not sufficient to demonstrate that he qualifies as a function manager. The Petitioner did not clearly articulate what essential function would be managed by the Beneficiary, provide a detailed duty description explaining the managerial duties he would perform related to an essential function, or provide evidence that someone other than the Beneficiary would perform the non-managerial duties associated with the claimed function.

The Petitioner asserts that we did not apply the proper standard of review, preponderance of the evidence, and instead "somehow subjectively" considered the facts and evidence. The Petitioner defines "preponderance of the evidence" but does not elaborate as to how we failed to follow that standard. The Petitioner cannot show proper cause for reconsideration simply by asserting that we should have approved the petition, and therefore our dismissal of the appeal must have been in error.

For the above reasons, we find that the Petitioner, on motion, does not articulate how our appellate decision misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when we dismissed the Petitioner's appeal. The Petitioner has therefore not met the requirements of a motion to reconsider.

III. CONCLUSION

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 denied and our previous decision will not be disturbed.

ORDER: The motion to reconsider is denied.

Cite as *Matter of C-, Inc.*, ID# 16507 (AAO May 2, 2016)