



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

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

MATTER OF Q-P-G- LLC

DATE: SEPT. 19, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a manufacturer and distributor of cheese, seeks to permanently employ the Beneficiary as its production manager under the first preference immigrant classification for multinational executives or managers. 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 of the Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) it will employ the Beneficiary in the United States in a managerial capacity; (2) the Beneficiary was employed abroad in a managerial capacity prior to his entry to the United States to work for the Petitioner as a nonimmigrant; and (3) it has a qualifying relationship with the Beneficiary's foreign employer. The Petitioner appealed the denial to us. We dismissed the appeal, finding that the Petitioner had overcome only the third ground for denial.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits updated organizational, financial, and business documents and asserts that we erred by emphasizing the company's small staff, without considering outsourced labor.

We will deny both motions.

I. MOTION REQUIREMENTS

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 will discuss the requirements of each type of motion below. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen the proceeding to instances where the petitioner has shown "proper cause" for that action. Thus, to merit reopening, 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. MOTION TO REOPEN

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). The Petitioner has submitted some evidence that is new to the record. For the reasons explained below, however, we find that this evidence does not warrant reopening of the proceeding or approval of the petition.

In our decision, we acknowledged that the Beneficiary “may exercise discretion over the Petitioner’s operations and possess authority with respect to discretionary decision-making,” but we found that the Petitioner did not show that the Beneficiary’s duties are *primarily* managerial as required by section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). We found that the Petitioner had not met this burden, in part because “the organizational chart submitted at the time of filing . . . showed . . . six employees involved in manufacturing, and no sales or distribution staff.” The Petitioner later clarified that the Beneficiary’s subordinates consisted of two part-time employees and several contractors, none of whom earned amounts consistent with year-round, full-time employment. We concluded that “it appeared that the Beneficiary would spend his time primarily on sales and distribution activities.”

On motion, the Petitioner states that it “makes use of third-party providers to alleviate the more ordinary tasks from the beneficiary’s time,” and therefore “does not need to rely on its own infrastructure and resources to meet the non-managerial day-to-day needs of the business.” The new evidence submitted on appeal relates to this assertion. The Petitioner submits:

- Sales data from January–April 2017 and January–April 2018;
- A revised organizational chart, including third-party service providers;
- Copies of invoices from suppliers and a shipping company, dated January–April 2018;
- A copy of the Petitioner’s [REDACTED] membership card;
- A copy of the Petitioner’s 2017 tax return; and
- The Beneficiary’s “Updated Job Description.”

The documents from 2017 and 2018 do not establish proper cause to reopen the proceeding, because they cannot establish eligibility as of the petition’s filing date in October 2016. The Petitioner does not establish, on motion, that similar arrangements were in place at the time of filing, and therefore we need not examine the merits of the 2017–2018 materials here. The new job description is very different from the description submitted with the original 2016 filing. As we noted in the dismissal notice, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

The only new document that is, on its face, applicable at the time of filing is the Petitioner's membership card, showing that the Petitioner has been a member since 2007. This membership, however, does not establish that the Beneficiary's duties are primarily managerial; it merely identifies where the Petitioner obtains needed supplies.¹

Because the Petitioner has not shown that the newly submitted evidence establishes that the petition was approvable at the time of filing, the motion to reopen is denied.

III. MOTION TO RECONSIDER

A motion to reconsider must establish that our 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). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy.

In our dismissal notice, we agreed with the Director's finding that the Petitioner did not establish that the Beneficiary was employed abroad, and will be employed in the United States, in a managerial capacity, as required by 8 C.F.R. § 204.5(j)(3).

The Petitioner asserts that its reliance on the "outsourcing of labor" to "third-party providers" relieves the Beneficiary from having to perform non-qualifying tasks, allowing him "to focus on the essential function [of] growth and development." As noted above, the Petitioner does not show that it relied on these third parties at the time of filing, because the invoices date from more than a year after the filing date.

Two of the suppliers are cheese wholesalers, and the Petitioner acknowledges that it relies on an outside supplier "for mass production of [its] most-popular product." This appears to be a major revision of a central claim, because the Petitioner originally called itself a producer of cheese, rather than simply a reseller of products manufactured elsewhere. Specifically, the Petitioner had initially stated that the foreign parent company "engages in the production and distribution of specialty cheeses," and "provides the rennet, cultures, equipment, and knowledge," which the Petitioner "implements . . . to provide the same products and service in the United States," using a "very specialized" "manufacturing process" that required the Beneficiary's experience and knowledge. Subsequent submissions demonstrated that the Petitioner has no full-time manufacturing staff, and the invoices submitted on appeal show that the Petitioner purchases hundreds of pounds of cheese every month. In this way, the Petitioner's reliance on outside suppliers may relieve the Beneficiary from having to perform certain tasks, but it also relieves the Petitioner from employing the manufacturing staff that formed a core element of the Petitioner's initial claim.

¹ We also note that the Petitioner, a limited liability company, did not form until March 2009, almost a year and a half after the membership date on the membership card. The Petitioner does not address or explain this discrepancy.

The other suppliers named in the motion brief — a transportation service and a restaurant supply wholesaler — do not affect our prior decision, because we had made no finding that transporting cargo or procuring inventory prevented the Beneficiary from primarily performing managerial tasks.

With respect to the Beneficiary’s earlier employment abroad, we made the following findings:

- The initial job description appeared to indicate that “the Beneficiary primarily performed non-managerial duties associated with purchasing, product development, product warehousing, inventory, and product quality.”
- The Petitioner did not provide enough information about the foreign entity’s staffing to show that the company “had sufficient staff to relieve the Beneficiary from performing primarily non-managerial duties associated with the production, sale, and distribution of the company’s products” or “that the Beneficiary supervised subordinate managers, supervisors, or professionals while employed abroad.”
- A new job description submitted on appeal “bears no resemblance to the one submitted previously,” even though they both referred to the same period of employment. Also, its origin was questionable because, although the same person purportedly provided both versions, the signatures on the two documents did not resemble one another.

On motion, the Petitioner does not address any of these findings. Therefore, the Petitioner does not establish that our earlier decision was in error on any of the above points.

The Petitioner’s assertions on motion do not establish proper cause for reconsideration.

IV. CONCLUSION

The Petitioner did not establish that we erred in our prior decision, or submit new evidence to show that the petition was approvable at the time of filing.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of Q-P-G- LLC*, ID# 1642165 (AAO Sept. 19, 2018)