



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

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

In Re: 12008834

Date: DEC. 1, 2020

Motions on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Multinational Manager or Executive

The Petitioner seeks to permanently employ the Beneficiary as its general manager under the first-preference, immigrant visa classification for multinational managers and executives. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, and we dismissed the Petitioner's following appeal. *See In Re: 8031126* (AAO Apr. 17, 2020). We agreed with the Director that the Petitioner did not demonstrate its proposed U.S. employment of the Beneficiary in the claimed managerial capacity. *Id.* We reserved decision on the Director's finding that the Petitioner did not establish the Beneficiary's managerial role abroad. *Id.*¹

The matter is now before us on the Petitioner's motions to reopen and reconsider. The Petitioner bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

¹ Before the Director, the Petitioner asserted the Beneficiary's employment abroad and in the United States in both managerial and executive capacities. On motion, however, the Petitioner argues that he worked abroad and would work in the United States in only a managerial capacity. We therefore will not consider the executive nature of the Beneficiary's employment abroad or in the United States.

II. MOTION TO RECONSIDER

A. The Proposed Job Duties

The Petitioner argues that we erred on appeal by finding descriptions of the Beneficiary's proposed U.S. job duties to be vague and generic. The Petitioner asserts that, in an adopted decision, we found similar descriptions of proposed duties to be sufficiently detailed. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

In *Z-A-*, we ruled that a petitioner established its proposed employment of a beneficiary in a managerial capacity. *Matter of Z-A-, supra*, at 2.² We stated that, as the petitioner's vice president and chief operating officer, the beneficiary would: direct and manage the company's financial, legal, trade, administrative, and sales activities; establish financial and budgetary plans and goals; review and monitor sales activities performed by the company's sales manager; liaise with the parent company; and interact with customers and outside service providers. *Id.* In this case, the Petitioner described the Beneficiary's proposed job duties as general manager to include: coordinating and directing the corporation; preparing and managing the company's policies; reviewing the analysis of the activities, costs, and operations of the company; supervising all financial aspects of the sales and marketing operations; meeting with executives of other companies; and supervising and maintaining constant control of the company's financial results.

We acknowledge general similarities between the job-duty descriptions here and in *Z-A-*. In *Z-A-*, however, we did not quote or recite the petitioner's descriptions of the proposed job duties. We merely summarized them. A petitioner must "describe in detail" the duties to be performed. *Matter of Z-A-, supra*, at 4. But, because *Z-A-* focused on the beneficiary's proposed management of foreign personnel while in the United States, our decision did not discuss the petitioner's detailed descriptions of all proposed duties or the evidence supporting them. Here, however, the Petitioner has provided few details and little supporting evidence of the Beneficiary's proposed job duties. As we found on appeal, the Petitioner did not provide examples of plans that the Beneficiary has or would purportedly develop and implement, goals that he reportedly set or would set, or campaigns that he allegedly put in place or would put in place.

Also, the Petitioner claimed that the Beneficiary had and would supervise and evaluate subordinate managers. But the company did not provide evidence of such oversight and evaluations, such as employee performance review reports. The Petitioner's job-duty descriptions do not sufficiently indicate the Beneficiary's proposed daily tasks or provide specifics regarding the company's business or industry. The lack of specificity casts doubts on the credibility of the proposed job duties. *See Fedin Bros. Co., Ltd. v Sava*, F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990) (holding that "[s]pecifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature"). Our summary of the proposed duties in *Z-A-* therefore does not demonstrate the sufficiency of the Petitioner's job-duty descriptions in this matter.

² Unlike this case, *Z-A-* concerned an L-1A nonimmigrant visa petition. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Both multinational managers and L-1A intracompany transferee managers, however, must meet the same elements of the definition of the term "managerial capacity." *See* section 101(a)(44)(A) of the Act.

The Petitioner also asserts that we “arbitrarily and unlawfully labeled” its descriptions of the job duties of the Beneficiary’s proposed subordinates as “non-credible” and insufficient to demonstrate the required natures of their positions. *See* section 101(a)(44)(A)(ii) of the Act (requiring personnel managers to primarily supervise and control the work of other supervisory, professional, or managerial employees). The Petitioner states: “Those statements are not objective and more likely express a personal opinion of the Officer that reviewed [the Petitioner’s] petition.”

The record, however, supports our skepticism regarding the subordinates’ proposed duties and positions. As we found on appeal, the Petitioner’s job-duty descriptions do not describe services that the subordinate managers would purportedly direct, objectives and procedures that they would reportedly establish, infrastructure that they allegedly would improve, controls they would purportedly develop, or goals and deadlines they would allegedly set. The generic job descriptions could apply to virtually any supervisory positions at any companies in any industries. The descriptions therefore do not credibly demonstrate the Beneficiary’s proposed supervision and control of other supervisory, professional, or managerial employees.

Also, the proposed duties conflict with the Petitioner’s organizational chart. The Petitioner states that the purported subordinate managers would direct services and establish goals and procedures. But the organizational chart places the three managers above only two operational-level employees. This top-heavy structure casts doubts on how all the managers could perform proposed supervisory duties. Thus, the descriptions of the subordinates’ proposed job duties do not establish the Beneficiary’s proposed supervision and control over the work of other supervisory or managerial employees.

B. Professional Employees

The Petitioner argues that, contrary to our appellate finding, the Beneficiary would supervise and control the work of professional employees. The Petitioner states that the Beneficiary’s purported managerial subordinates not only have bachelor’s degrees in relevant fields, but they also “engage in work that is primar[ily] intellectual, using the knowledge of the degree[s] they obtained . . . , plus the years of experience they all have in the field.”

The Petitioner, however, bases its argument on an inapplicable definition. The Petitioner cites a U.S. Department of Labor (DOL) definition of the term “professional employee.” *See* 29 U.S.C. § 152(12)(a).³ That definition applies in DOL proceedings regarding labor management relations, but not in immigration matters. Rather, the Act defines the term “profession” by providing examples of professional occupations, such as architects, engineers, and lawyers. Section 101(a)(32) of the Act. Department of Homeland Security regulations further explain that a “profession” is “any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement

³ The provision defines a “professional employee” as “any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.” 29 U.S.C. § 152(12)(a).

for entry into the occupation.” 8 C.F.R. § 204.5(k)(2). Thus, for immigration purposes, a “professional” employee works in an occupation with minimum entry-level requirements of at least a bachelor’s degree. Because the Petitioner’s assertions rest on a different interpretation of the term “professional,” we must reject them.

C. Function Manager

The Petitioner also asserts that we erred in failing to consider the Beneficiary’s qualifications as a function manager. *See* section 101(a)(44)(A) of the Act (defining the term “managerial capacity” to allow management of either personnel or “essential” functions). The Petitioner notes that its appellate brief stated the Beneficiary’s “main duties” as “managing and directing the organization’s major functions and supervis[ing] these major functions. [The Beneficiary] is supervised by the Board of Directors and controls the organization’s major functions through other people.”

We agree that the Petitioner described the Beneficiary’s job duties as including management of the company’s main functions. But the Petitioner did not specifically assert that the Beneficiary would manage an “essential” function(s) as contemplated by section 101(a)(44)(A) of the Act. We therefore did not err in failing to consider his qualifications as a function manager.

Even if the Petitioner did assert the Beneficiary’s proposed employment as a function manager, the record would not support the claim. To support a claim that a beneficiary would manage an essential function, a petitioner must describe the function “with specificity” and establish that it is “core to the organization.” *Matter of G- Inc.*, Adopted Decision 2017-05 3 (AAO Nov. 8, 2017). The Petitioner here did not describe or even identify the functions that the Beneficiary would manage. Similarly, the company did not establish the functions as “essential.”

In addition, the Petitioner would not have raised the claim until the appeal’s filing. We generally do not consider claims for the first time on appeal. *See Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007). A petitioner also may not make material changes to a filing to make an apparently deficient petition conform with requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm’r 1998). For the foregoing reasons, we did not err by failing to consider the Beneficiary as a function manager.

III. MOTION TO REOPEN

A. Job Duties

The Petitioner submits a new letter from a corporate officer purportedly describing the Beneficiary’s proposed job duties and the percentages of his time he would spend on them. Rather than resolving prior inconsistencies, however, the letter adds to them.

Without indicating percentages of time the Beneficiary would spend on the tasks, the letter lists proposed duties of the offered U.S. position of general manager. The duties include planning the general and specific objectives of the company; organizing its current and future structure; and directing the company and making decisions. “*In addition to these responsibilities*,” the letter lists other activities totaling 100% of the Beneficiary’s time. (emphasis added). The record does not explain how the Beneficiary could spend more than 100% of his time on duties and activities. *See*

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, object evidence pointing to where the truth lies). The inconsistency prevents us from determining the true duties of the position and the true percentages of time the Beneficiary would spend on them.

The Petitioner asserts that all the Beneficiary's duties are managerial in nature. But the record does not support that assertion. The Petitioner has not demonstrated that such duties as planning objectives, organizing corporate structure, authorizing the purchase of materials, and "[p]erforming mathematical, algebraic and financial calculations" involve supervision and control over the work of others. See section 101(a)(44)(A)(ii) of the Act. The Petitioner therefore has not established that the Beneficiary would primarily work as a personnel manager.

The letter also does not resolve prior inconsistencies in the Petitioner's proposed job duties. Our appellate decision noted that the Petitioner provided duties in response to the Director's written notice of intent to deny (NOID) the petition - such as coordinating and directing the corporation and supervising managers - that the company omitted from its initial list of duties. Also, the initial list of duties discussed various "service levels," which the NOID response did not mention. The Petitioner's new letter does not explain these job-duty discrepancies and others noted in our appellate decision. See *Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). The unresolved discrepancies cast further doubt on the duties of the offered position and its claimed managerial nature.

The letter also contains new job-duty descriptions for the Beneficiary's proposed subordinate managers. The descriptions, however, are not specific enough to establish the subordinates as supervisory, professional, or managerial employees. For example, the descriptions do not specify or provide examples of the sales strategies, plans, and programs that the sales and operations manager would direct and evaluate, or of the marketing plans that the marketing manager would design, plan, prepare, and implement. Also, many of the managers' duties do not appear to be supervisory, professional, or managerial in nature. For example, the descriptions indicate that the administrative manager would spend most of her time verifying the company's banking position and preparing and revising its payroll.

For the foregoing reasons, the Petitioner's descriptions of proposed job duties do not establish the claimed managerial nature of the offered position.

B. Staffing and Structure

Our appellate decision found that the Petitioner did not establish sufficient staffing or organizational structure to employ the Beneficiary as a personnel manager, in part because evidence indicated that only one of the company's two operational-level employees worked on a full-time basis. An IRS Form W-2, Wage and Tax Statement, shows that the woman in the position of administrative assistant received only \$8,371.98 in 2017, which would appear to reflect only part-time employment. On motion, the Petitioner submits additional payroll documentation, contending that the administrative assistant worked full-time for the first half of 2017 before leaving the company in July of that year.

The payroll documentation confirms the annual amount the administrative assistant received in 2017. But the documentation does not specify the dates or amounts of her payments that year. The documentation therefore does not corroborate her purported, full-time employment before leaving the company in July 2017.

The documentation also shows that, in 2018 through the first half of 2019, the Petitioner paid its operational-level employees at least the minimum wage for full-time employment. A petitioner, however, must demonstrate eligibility for a requested benefit at the time of a petition's filing. 8 C.F.R. § 103.2(b)(1). The Petitioner filed this petition in May 2017. Thus, the record does not establish the Petitioner's full-time employment of all its operational-level employees at the time of the petition's filing. The potential part-time employment of half of its operational staff at the time of filing casts doubt on the Petitioner's proposed employment of the Beneficiary as a personnel manager. *See* section 101(a)(44)(A)(ii) of the Act (requiring a personnel manager to primarily supervise and control the work of other supervisory, professional, or managerial employees).

The Petitioner also submits additional organizational charts. The charts, however, show that the Petitioner still proposes the same, basic organizational structure. The Beneficiary would directly supervise three managers who, in turn, would oversee two operational-level employees. At the operational level, the Petitioner's chart retains a sales representative reporting to the sales and operations manager. But the company has eliminated the position of administrative assistant, which reported to the administrative manager. Instead, the Petitioner created the position of "customer service" under the marketing manager. So, just as the original chart indicated that the marketing manager would not supervise anyone, the new charts show the administrative manager without a subordinate.

Thus, the Petitioner's structure, combined with the potential part-time employment of half of its operational staff at the time of the petition's filing, cast doubt on the company's ability to support a personnel manager. The record therefore does not establish the Petitioner's possession of sufficient staffing and organizational structure to employ the Beneficiary in a managerial capacity.

IV. REMAINING ISSUE

The Petitioner asserts that the Beneficiary also served in a managerial capacity while previously working for its parent company in Venezuela. Because the Petitioner has not demonstrated his proposed employment as a manager in the United States, however, we will continue to reserve judgment on the nature of his employment abroad. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

V. CONCLUSION

Neither the Petitioner's arguments nor its additional evidence demonstrates the Beneficiary's proposed employment in the United States in the claimed managerial capacity. We will therefore affirm our appellate decision.

ORDER: The motion to reconsider is dismissed

FURTHER ORDER: The motion to reopen is dismissed.