



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

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

MATTER OF T-USA, LLC

DATE: JUNE 6, 2016

MOTION ON AAO DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Georgia limited liability company that intends to operate a gas station/convenience store and plastics recycling businesses, seeks to temporarily employ the Beneficiary as the vice president/CFO of its new office and to classify him under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Director subsequently granted the Petitioner's combined motion to reopen and reconsider, and affirmed the original decision. The matter then came before us on appeal, which we dismissed based on the conclusion that the Petitioner did not establish by the preponderance of the evidence that the Beneficiary would be employed in a qualifying executive capacity within one year of the approval of the petition.

The matter is now before us on a motion to reconsider. In its motion, the Petitioner asserts that our "assertions are factually incorrect" and cites unpublished case law in support of this argument.

Upon review, we will deny the motion to reconsider.

I. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits the authority of an officer of U.S. Citizenship and Immigration Services (USCIS) to reopen a proceeding or reconsider a decision to instances where "proper cause" has been shown for such action. Thus, to merit reopening or reconsideration, not only must the submission 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. 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.

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).

II. DISCUSSION AND ANALYSIS

The Director denied the petition on July 1, 2014, concluding that the Petitioner did not establish that the Beneficiary would be employed in the United States in an executive capacity within one year of approval of the petition.

The Petitioner filed a combined motion to reopen and reconsider with the Vermont Service Center on July 30, 2014. Although the Director considered the Petitioner’s brief in support of its combined motion, she issued a second decision, dated February 20, 2015, affirming the denial of the petition. The Director found that the Petitioner did not submit sufficient evidence to establish that it conducted due diligence to ensure that a gas station/convenience store or a plastics recycling business would be operational and would support the Beneficiary in an executive capacity within one year of approval of the petition. The Director further noted that the Petitioner did not provide evidence to establish that the foreign entity committed sufficient funds to remunerate the Beneficiary and begin operations in the United States.

On appeal, the Petitioner disputed the Director’s findings, contending that the foreign entity invested significant funds toward the start of the U.S. business and intended to contribute more money toward the purchase of the gas station/convenience store operation. In a decision dated November 23, 2015, we dismissed the appeal, affirming the Director’s conclusion. We found that the Petitioner provided multiple descriptions for the same position without explaining why the changes were made or clarifying the specific job duties the Beneficiary would perform during and subsequent to the

Petitioner's first year of operations. We also noted that the Beneficiary would carry out a number of non-qualifying tasks dealing with marketing, invoices, and other administrative matters and that the Petitioner's primary focus during its first two to three years of operation would be on a single gas station/convenience store. Further, we determined that the Petitioner did not establish that \$31,000, which the foreign entity put up as its initial investment in the Petitioner's company, would be sufficient to commence operations.

In support of the instant motion to reconsider, the Petitioner offers a supporting brief containing assertions regarding its plans for the startup phase of its operation. The Petitioner also addresses the Beneficiary's job duties, hiring plan, and funding of the startup operation, offering information in an attempt to overcome our prior findings. In support of its assertions, the Petitioner cites to unpublished AAO decisions to establish comparisons between the instant Petitioner and petitioners whose appeals we sustained. We find that the Petitioner's citation of unpublished AAO decisions is not in line with the regulatory provisions for a motion to reconsider, which must "be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy." 8 C.F.R. § 103.5(a)(3). In addition, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

While the Petitioner also cites *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966), and *INS v. Cardozo-Fonseca*, 480 U.S. 421 (1987), which address the burden and standard of proof, respectively, the Petitioner has not established how either case applies to the matter at hand, where we dismissed the Petitioner's appeal based on evidentiary deficiencies which resulted in the conclusion that the Petitioner would not be able to support the Beneficiary in an executive capacity one year after approval of the petition. Neither precedent decision supports the Petitioner's assertion that we failed to comply with the preponderance of the evidence standard of proof. Based on the comprehensive discussion we included in our prior decision, we had more than "some doubt" as to the Petitioner's eligibility. In fact, we articulated numerous concerns regarding the validity and content of the Beneficiary's job descriptions, the sufficiency and reliability of the Petitioner's business plan, the sufficiency of the funds provided to support the startup of the Petitioner's operations, and the foreign entity's ability to fund the proposed purchase of a gas station/convenience store. The Petitioner cannot be said to meet the requirements of a motion to reconsider by merely asserting that our decision did not comport with the legal standard of proof without specifying how our decision breached that standard and citing to precedent case law to establish that our findings were legally unsound.

Further, the Petitioner's reference to an additional \$30,000, which it expected to receive from the parent company, is insufficient and does not meet the requirements of this motion, which takes into account only those documents which were present in the record at the time our prior decision was issued. Similarly, while the Petitioner's claimed eligibility is based on the purchase of a gas station/convenience store, the record lacks evidence to establish that a business was actually purchased such that the Petitioner would have been able to commence operations upon approval of the petition. Thus, in light of the lack of evidence of additional investments or the purchase of a

business at the time of our prior review of the record, we have no reason to consider any additional investments on motion.

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. Here, the Petitioner does not establish our decision, dated November 23, 2015, was incorrect based on the evidence of record at the time of that decision. Therefore, the motion before us does not satisfy the requirements of a motion to reconsider as stated at 8 C.F.R. § 103.5(a)(3).

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.

ORDER: The motion to reconsider is denied.

Cite as *Matter of T-USA, LLC*, ID# 16859 (AAO June 6, 2016)