



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

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

MATTER OF M-M-, LLC

DATE: JUNE 6, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a web and network consulting company, seeks to extend the Beneficiary's temporary employment as its contract manager and chief executive officer under the L-1A nonimmigrant intracompany transferee classification. *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 concluded that the Petitioner had not established that: 1) it has a qualifying relationship with the Beneficiary's former foreign employer, 2) it was doing business as defined by the regulations, and 3) the foreign employer was doing business. We affirmed the Director's decision on appeal, but withdrew the Director's finding that the foreign employer was not doing business. However, beyond the decision of the Director, we concluded that the Petitioner did not establish that the Beneficiary would act in a managerial or executive capacity under the extended petition.

The matter is now before us on a motion to reopen and a motion to reconsider. In its motion, the Petitioner submits additional evidence and asserts that, in dismissing its appeal, we overlooked evidence demonstrating its ownership, misconstrued the evidence relevant to whether it was doing business as of the date of filing, and acted in error by raising an additional basis for dismissal in our appellate decision.

Upon review, we will deny the combined motion.

## I. MOTION REQUIREMENTS

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

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 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 Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), “*Requirements for motion to reopen*,” states: “A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence . . . .”

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states: “**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence.”<sup>1</sup>

Further, the new facts must possess such significance that, “if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case.” *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

#### C. 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.

---

<sup>1</sup> The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states: “**Motion to Reconsider:** The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.”

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).

Here, the Petitioner has submitted new evidence to support a motion to reopen, but has not stated specific reasons for reconsideration and cited to regulations and case law in support of its assertion that the petition was denied and the appeal was dismissed in error. While we will address the Petitioner’s evidence and assertions below, the Petitioner has not established that our previous decision was incorrect based on the evidence of record at the time of the initial decision and has not demonstrated that the petition warrants approval. Accordingly, we will deny the combined motion.

## II. QUALIFYING RELATIONSHIP

The first issue to be addressed is whether the Petitioner has established that it has a qualifying relationship with the foreign employer.

To establish a “qualifying relationship” under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with “branch” offices), or related as a “parent and subsidiary” or as “affiliates.” *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The Petitioner claims to be a wholly-owned subsidiary of the Beneficiary’s former employer in Pakistan. The record shows that the Petitioner was originally organized as a Maryland limited liability company in 2009, and later organized as a Georgia limited liability company in 2014. The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 27, 2013.

In dismissing the appeal, we determined that the Petitioner had not submitted sufficient evidence to demonstrate its ownership, including articles of organization, minutes of company meetings, evidence of capital contributions to the company, an operating agreement, or other such supporting documentation. We acknowledged that the Petitioner had submitted an ownership certificate dated July 30, 2014, reflecting its issuance of 1,000 membership units to the Beneficiary and that the Beneficiary was the sole owner of the foreign employer. However, the membership certificate issued to the Beneficiary is for the Georgia limited liability company established in July 2014. We pointed to the lack of other supporting evidence listed above to substantiate ownership in the Petitioner, particularly evidence coinciding with the original formation of the company in Maryland in 2009. As the petition was filed in September 2013, the Petitioner must establish the ownership of the Maryland limited liability company that existed at the time of filing.

On motion, the Beneficiary states: “I had included my shares certificate and Article of Organization. You have confirmed this in your denial letter.”

Upon review of the Petitioner's assertions and additional evidence on motion, we conclude that it has not established that it has a qualifying relationship with the foreign employer.

As stated in our previous decision, the regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

On motion, the Petitioner has not addressed the basis of our finding with respect to its qualifying relationship with the Beneficiary's foreign employer or submitted any additional evidence.

In addition, although a Georgia limited liability company was established with the same name in July 2014, that company was formed well after this petition was filed in September 2013. Therefore, while the Petitioner correctly asserts that it submitted some evidence indicating that the Beneficiary owns the Georgia company, the Petitioner has not provided any documentation to substantiate the ownership of the Maryland limited liability company that existed at the time of filing, such as its membership certificates, articles of organization, an operating agreement reflecting its formation, or evidence of capital contributions made pursuant to its formation in 2009 and thereafter. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

Further, although the evidence suggests that the Beneficiary may own the Georgia limited liability company, the Petitioner claimed at the time of filing that the Maryland company was owned by the Beneficiary's foreign employer. For this reason, we will not assume that both U.S. companies have the same ownership.

We note that the Petitioner has now had three opportunities to submit additional corporate documentation to substantiate its ownership as of the date of filing, including an RFE issued by the Director, an RFE issued by this office prior to our dismissal of the appeal, and now in support of the current motion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

(b)(6)

*Matter of M-M, LLC*

As the record does not contain evidence of the Petitioner's ownership as of the date of filing, we conclude it has not established that it has a qualifying relationship with the Beneficiary's foreign employer.

### III. U.S. ENTITY DOING BUSINESS

The next issue to address is whether the Petitioner has demonstrated that it was doing business as of the date of the filing of the petition.

The regulations define a qualifying organization as one doing business as an employer in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(2). The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as follows:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In concluding that the Petitioner had not established that it was doing business at the time of filing, we pointed to the fact that it had not submitted corporate income tax returns from 2011 through 2014, as requested by the Director and this office, to verify that it was regularly, systematically, and continuously providing goods and services. In addition, we emphasized that the Petitioner had provided only contracts, invoices and evidence of payments dating from well before or after the filing of the petition, and that this evidence did not substantiate that it was doing business at the time of filing.

On motion, the Petitioner contends that we misconstrued its statement in a support letter that "there is no point since 2009, that the company was not authorized to do business legally." The Petitioner asserts that we interpreted this statement as an acknowledgement by the company that it was not authorized to do business legally.

In addition, the Petitioner provides a letter from the Beneficiary and additional documentation meant to demonstrate that it was doing business at the time of filing the petition. The Beneficiary states that certain payments were received after the filing of the petition in September 2013, but that the work associated with these payments was performed prior to the filing of the petition. The Petitioner makes the following assertions and submits the listed evidence specific to its asserted provision of services:

- The Petitioner states that it performed 200 hours of services for a client [REDACTED] and provides a screen shot of its bank account reflecting a wire transfer of \$1,600 from this client on October 24, 2013.
- The Petitioner provides two screen shots indicating that it received two payments from [REDACTED] the former for \$250 on October 2, 2013, and the latter for \$1,250 on January 30, 2013.

*Matter of M-M, LLC*

- The Petitioner asserts that it regularly provided services to a client called [REDACTED]. The Petitioner states that it has been providing these services since 2011 and working 50 hours per week from this time until the present. In support of this assertion, the Petitioner submits an unidentified printout reflecting \$460 payments made monthly from January 2013 through December 2013 from a [REDACTED]. The Petitioner states that while the Beneficiary was in Pakistan, [REDACTED] “was continuously served and in return they were continuing to make payments which were at the time being processed through the affiliate office in Pakistan.”
- The Petitioner provides copies of the foreign employer’s bank statements highlighting a payment made in the amount of 1,216,250 Pakistani rupees on February 6, 2013, by a [REDACTED] and another payment in the amount of 1,221,250 Pakistani rupees on March 5, 2013, by the same party. The Petitioner explains that these amounts are “equivalent to \$12,500.” The Petitioner submits four other wire transfers made to the foreign employer in similar amounts from [REDACTED] throughout 2013.
- The Petitioner provides bank statements indicating that it received \$9500 from [REDACTED] on September 5, 2013, and payments of \$12,500 from October to December 2013 from this asserted client.
- The Petitioner provides bank statements it asserts reflect bank deposits representing payments from a client [REDACTED] in the amounts of \$2880, \$4150, \$4250, and \$4000 throughout 2013.

The Petitioner asserts that the services it provided to the above referenced clients amounted to 21,689 hours of total work performed.

The Petitioner further contends that we erred by not considering the Beneficiary’s 15-month absence from the United States during the term of his previous visa petition, and asserts that “it is only fair to give due importance to the absence of the Beneficiary” when assessing the Petitioner’s performance. In an additional support letter, the Beneficiary states that his delay in Pakistan had “a great impact on the business and disrupted my plan,” that he was in a “tough spot,” needing to “first take care of offshore office expansion and relocation.” The Petitioner indicates that it was “functioning and still generating enough business to sustain itself and the staff” during the Beneficiary’s absence.

Upon review of the Petitioner’s assertions and additional evidence submitted on motion, it has not demonstrated that the Petitioner was doing business as defined by the regulations at the time it filed the petition.

The Petition has overlooked the basis of our decision on two material accounts. First, the Petitioner suggests that we denied the petition, in part, because we found that the Petitioner was not “authorized to do business legally since 2009.” We note that this conclusion was never stated in our previous decision. Rather, we emphasized that the Petitioner had not submitted requested corporate income tax returns for the years 2011 through 2014 to verify its revenue and financial status and to

(b)(6)

*Matter of M-M, LLC*

allow us to determine whether the company was doing business regularly, systematically, and continuously when the petition was filed in September 2013. The Petitioner, despite having three opportunities to submit its tax returns, does not provide this evidence on motion. In fact, the Petitioner submits no concrete statements regarding its financials as of the date of the petition. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Further, the evidence submitted in support of the motion does not overcome the lack of tax and financial documentation necessary to substantiate the Petitioner's business activities as of the date the petition was filed. Although the Petitioner provides evidence indicating that it may have received payments from clients for services during 2013, it does not corroborate these services and payments with other supporting documentation. It is reasonable to conclude that, in addition to incomplete evidence of payments received, other relevant evidence would exist to clearly corroborate the Petitioner's business activities. Such evidence could include invoices, documentation reflecting the actual performance of services, a description of the services performed, contracts or correspondence with clients. Although the Petitioner contends that it provided 21,689 hours of total work prior to the filing of the petition, it has not sufficiently substantiated this claim.

The Petitioner states that it provided continuous services to [REDACTED] from 2011 until the date of filing this petition, but provides only a single printout of payments made during 2013 from [REDACTED] who is not identified elsewhere in the record. Again, the Petitioner does not provide other supporting documentation to substantiate this business relationship such as contracts, correspondence, invoices, an explanation of these services, or evidence of the completion of these services. Indeed, given the Petitioner's low level of employees at the time the petition was filed, the Beneficiary's absence from the United States for 15 months, and evidence indicating payments made directly to the foreign employer, there is question as to whether the Petitioner was providing services or whether the foreign employer was performing these activities. The Beneficiary stated that he had returned to Pakistan to expand the foreign employer's operations there, suggesting that the foreign employer and not the Petitioner, was performing these services. Although the Petitioner contends that it continued to do business throughout this period, it has not submitted sufficient documentary evidence to support this assertion, such the tax and transactional documentation previously referenced. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Lastly, the Petitioner asserts on motion that we erred by not considering the impact of the Beneficiary's absence from the United States for 15 months. We have considered his absence; however, we cannot find that it is relevant to determining whether the company had been doing business in a regular, systematic, and continuous fashion at the time of filing. Following a review of the evidence submitted on motion, for the reasons set forth above, we do not find that the Petitioner has demonstrated that it was doing business as required by the regulations as of the date of the petition filing.

#### IV. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The last issue to address is whether the Petitioner established that the Beneficiary will be employed in a managerial or executive capacity, as defined at sections (101)(a)(44)(A) and (B) of the Act, under the extended petition.

Although this issue was not addressed by the Director, we determined on appeal that the evidence of record did not establish that the Beneficiary would be employed in a managerial or executive capacity. We emphasized the Petitioner's low level of staffing at the time of filing and the stated disruption of the business due to the Beneficiary's absence from the United States.

In its motion, the Petitioner states that "making a decision on an issue without giving any opportunity to the respondent to address it is against the norms of justice." The Petitioner asserts that if we had issue with the Beneficiary's job description in the United States that we "must issue a request for evidence" and allow it to address this "instead of making a unilateral decision about an issue."

Further, in the letter from the Beneficiary submitted on motion, the Beneficiary states that our decision "reflects a sheer misunderstanding on part of the Service about my role in the Company." The Beneficiary indicates that he does not "possess on-hand technical knowledge to program or design," noting that he has a "Masters in Business Administration." The Beneficiary explains that he was required to return to Pakistan in 2012 "to take the company to the next level" by hiring "more technical human resource and work with senior management to streamline work and improve company policies." As previously noted, the Petitioner states that the Beneficiary spent 15 months in Pakistan during the term of the previous visa "for reasons beyond [his] reasonable control" which had "a great impact on the business and disrupted [his] plan." The Petitioner requests that we take into consideration the Beneficiary's absence and its impact on the business.

In addition, the Petitioner submits a "Decision of Administration Hearing Officer" dated September 20, 2012 from the Georgia Department of Labor relevant to its former marketing manager. The decision reflects that this former marketing manager was not entitled to unemployment compensation indicating that he had been terminated for cause by the Petitioner. The Petitioner states that this incident is reflective of the "employee performance issues" it faced during the Beneficiary's extended absence. The Beneficiary asserts that the decision "proves that while being offshore I was still trying to discharge my duties and making executive decisions."

Upon review of the additional evidence and assertions provided on motion, the Petitioner has not established that the Beneficiary will act in a managerial or executive capacity under the extended petition.

First, we will address the Petitioner's contention that it was improper for us to decide on an issue beyond the decision of the Director. Our ability to make determinations beyond the decision of a service center director is well established by case law. We may deny an application or petition that

fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the Administrative Appeals Office reviews appeals on a de novo basis).

In addition, neither the service center director nor this office is required to issue a request for further information in every case on every issue. Contrary to the Petitioner's contention, the RFE process does not act as an opportunity or right for a petitioner to respond to our interpretations of the record, but as a means for our collection of additional evidence where deemed prudent. *See* 8 C.F.R. § 103.2(b)(8). If a Petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. As such, even if we had committed a procedural error by failing to solicit further evidence with respect to the Beneficiary's managerial or executive capacity in the United States, it is not clear what remedy would be appropriate beyond the motion process itself.

Here, the Petitioner had the opportunity to supplement the record on appeal, in response to two RFEs, and now again on motion, but has not provided additional evidence directly relevant to the Beneficiary's managerial or executive capacity in the United States. For instance, in our dismissal, we pointed to the company's low staffing levels at the time of filing the petition, namely that it only had two employees as of this date. Further, we pointed to the Petitioner's own assertions that its business had been greatly disrupted by the Beneficiary's absence and its apparent lack of operations. In total, we found that this left significant question as to whether the Petitioner could support the Beneficiary in a managerial or executive capacity.

On motion, the Petitioner submits some evidence that it may have received payments from clients during 2013, but it does not provide substantial supporting documentation relevant to whether the Beneficiary would be acting primarily in a managerial or executive capacity, such as a detailed statement of his qualifying duties, documentation supporting his primary performance of these tasks, or an explanation or evidence as to how he has been and will be relieved from performing non-qualifying operational duties. Instead, the Petitioner merely states that the Beneficiary has no technical knowledge, and therefore, must be only performing managerial or executive tasks. However, as noted, the Petitioner provides little supporting evidence to support this assertion. The Petitioner provides one document from the Georgia Department of Labor reflecting that the Beneficiary likely terminated the company's marketing manager at some time prior to September 2012. Although hiring and firing are generally seen as qualifying tasks, documenting one instance of this activity is not sufficient to establish that the Beneficiary would be employed in a managerial or executive capacity as of the date of the petition. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Furthermore, the Beneficiary's assertions on motion only leave additional question as to whether the Beneficiary would be employed in a managerial or executive capacity in the United States. For

instance, the Beneficiary states that he returned to Pakistan to build up the foreign employer “to take the company to the next level” by hiring “more technical human resources” and “to work with senior management to streamline work and improve company policies.” First, the Petitioner has not submitted any supporting documentation to substantiate these assertions. Further, these statements are overly vague and do not provide a clear picture of the Beneficiary’s activities and how they establish that he will managerial or executive capacity in the United States. The Beneficiary further indicated that these activities were what prevented him from hiring additional staff in the United States, noting that he “first had to take care of offshore office expansion and relocation.” Again, the Petitioner does not detail why he was prevented from hiring additional staff, nor does it explain specifically what the Beneficiary’s activities abroad had to do with the Petitioner’s operations in the United States. Indeed, as noted in our previous decision, the Petitioner’s inability to function in the Beneficiary’s absence leaves question as to whether it was ever sufficiently developed to support him in a managerial or executive capacity. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, in conclusion, the Petitioner has not established that the Beneficiary would act in a managerial or executive capacity.

For the foregoing reasons, the Petitioner has not demonstrated that we acted in error in applying applicable law, and the Petitioner has not submitted sufficient new evidence to overcome our previous finding. Therefore, the combined motion is denied.

#### V. CONCLUSION

The Petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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 reopen is denied.

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

Cite as *Matter of M-M-, LLC*, ID# 16760 (AAO June 6, 2016)