



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

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

MATTER OF P-E-S- LLC

DATE: JUNE 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a one-employee private limousine and coach services business, seeks to extend the Beneficiary's classification as its president 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 a managerial or executive capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary will be employed primarily in a managerial or executive capacity in the United States. The Petitioner appealed the denial of the Director's decision to our office. We reviewed the record of proceeding and determined that it did not contain sufficient evidence to overcome the bases for the Director's denial. We provided a comprehensive analysis of the Director's decision and dismissed the appeal.

The matter is again before us on a motion to reconsider. In its motion, the Petitioner asserts that we made factual errors in our analysis and that the decision was not "substantiated by reason," and that the evidence of record should have been considered sufficient to meet the regulations.

Upon review, we will deny the motion.

1. 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).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) (“Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion.”). Rather, any “arguments” that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); *see also Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, 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 on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

II. DISCUSSION

For the reasons discussed below, we find that the Petitioner did not properly state the reasons for reconsideration, nor did the Petitioner support its assertions with citations to pertinent statutes, regulations, or precedent decisions to establish that our prior decision was incorrect based on the evidence of record.

In denying the initial petition, the Director found that the evidence submitted was insufficient to establish that the Beneficiary will be employed in a managerial or executive capacity. The Director stated that the Beneficiary’s position description was overly general and that the evidence did not

establish the existence of sufficient employees to relieve the Beneficiary from performing non-qualifying duties.

In dismissing the Petitioner's appeal, we agreed with the Director and found that the Petitioner had not provided sufficient information detailing the Beneficiary's duties at the U.S. company to demonstrate that his listed duties qualify him as a manager or executive. We found that the Petitioner had not provided a consistent or accurate organizational chart or other representation of its structure, nor had it consistently identified or documented its staffing levels or contractor positions as of the date of filing the petition. As such, we could not determine the number or type of employees or contractors the Beneficiary directly or indirectly supervised, whether there were employees available to relieve him from performing duties associated with the Petitioner's day-to-day operations, or his level of authority within the petitioning company. We noted that the Petitioner must demonstrate eligibility at the time of filing the petition, and its explanation of the growing nature of its business does not exempt the Petitioner from providing an accurate illustration of its actual staffing levels and managerial or executive duties as of December 2014 when the petition was filed. We found that, although the reasonable needs of the Petitioner may serve as a factor in evaluating the lack of staff, based on the Petitioner's representations, it did not appear that the reasonable needs of its company might plausibly be met by a single employee, the Beneficiary.

The Petitioner then filed this motion to reconsider. The submission constituting the motion consists of the Form I-290B and a brief. In its brief, the Petitioner maintains its objections to the Director's decision and inserts references to our decision on appeal. The Petitioner adds references to Administrative Appeals Office (AAO) non-precedent decisions and asserts that we incorrectly interpreted the facts contained in the record to conclude that the Petitioner did not meet the requirements of the visa category.

Specifically, the Petitioner notes two bases for its motion. First, the Petitioner indicates that the Petitioner's prior L-1A approvals should be given more deference or "the AAO should have at least addressed why the Director would have approved the eligibility on two separate occasions on the documentation submitted." The Petitioner's assertions on this issue were discussed at length on appeal. We informed the Petitioner that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. See 8 C.F.R. § 103.2(b)(16)(ii). The previously approved petitions are not before us, and as such, we cannot address the Director's findings in those cases. That said, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS is not required to treat acknowledged errors as binding precedent. *Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. See *La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

(b)(6)

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Second, the Petitioner indicates that we incorrectly interpreted two different letters describing the Beneficiary's executive or managerial duties. Regarding the first letter, dated May 8, 2010, the Petitioner states the following on motion:

[I]n a letter of support from May 2010 the percentages and duties were detailed. The [B]eneficiary was, at the time, the sole employee of the company, and as such performed all tasks relating to the management of the organization, but for some of the driving of clients, which is also performed by contract labor. In its decision, the AAO incorrectly found that no evidence as to percentage of time dedicated to executive or manager duties were provided by the [P]etitioner; however, the letter of May 8, 2010, specifically states that 60% of the [B]eneficiary's time would be spent on executive duties and 40% in the day to day running of the operation.

Regarding the May 8, 2010, letter, as we noted in the appeal decision, the letter clearly addressed the Beneficiary's duties abroad and not the Beneficiary's proposed duties with the Petitioner. The letter states:

[The Beneficiary] eventually became General Manager or President of the company in 2001 His managerial responsibilities in this position included all phases of operations. He has therefore overseen the efficient operations of all aspects of the business since March 2001. As President he had three people reporting to him; the vice-president and the Directors of Administration and Sales and Logistics and Production. Previously I was responsible for Logistics and Production. On average he spent approximately 60% of his time on executive duties and the remainder actually driving the cars or attending directly with customer needs."

The letter which is signed by [REDACTED] "Vice-President in charge" of the foreign entity, is written on the foreign entity's letterhead, and specifically refers to the Beneficiary's position as president of the foreign entity when describing the percentages of time the Beneficiary spent on various tasks. Thus, the Petitioner's assertion on motion regarding our examination of this letter is without merit.

The Petitioner also asserts on motion that, "the AAO incorrectly cited to a letter provided in the response to the request for evidence from the vice president in charge of the foreign entity as describing the duties of the [B]eneficiary in the position in question." The Petitioner states that it indicated in the submission that the letter was "merely a description of the duties of the Director of the organization in Venezuela and was a description of what is provided to potential customers when offering services." The Petitioner states, "the AAO should have looked to the description provided in the initial petition and the follow-up appeal as to the job description."

We note that the undated letter is printed on the foreign entity's letterhead and signed by [REDACTED] "Vice-President in charge." The letter is vague and does not indicate that it pertains to either job; rather, it refers to "Duties and Responsibilities of the Company Director." Based on the information provided in the record, it remains unclear whether this job description pertains to the Beneficiary's

position with the foreign entity, with the Petitioner, or neither, as the Petitioner now asserts. However, even if this letter was improperly described in the appeal decision, the Petitioner has not explained how the inclusion of this letter materially changed the outcome of the case. While noted in the appeal decision, the duties described in the undated letter did not form the basis of our conclusions. We also evaluated the statements provided in the initial petition and on appeal to fully analyze the Beneficiary's proposed duties. This documentation, when considered in conjunction with the lack of evidence concerning staff to relieve the Beneficiary from performing primarily non-qualifying duties, was not sufficient to establish that the Beneficiary would be employed in a managerial or executive capacity.

Therefore, we find that the Petitioner did not properly state the reasons for reconsideration or identify a misapplication of law, nor did the Petitioner support its assertions with citations to pertinent statutes, regulations, or precedent decisions to establish that our prior decision was incorrect based on the evidence of record. Accordingly, the Petitioner's filing does not meet the requirements of a motion to reconsider. The motion to reconsider must be denied.

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 P-E-S- LLC*, ID# 17211 (AAO June 21, 2016)