



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

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

MATTER OF E-A-I-G- LLC

DATE: OCT. 25, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an automobile transport company, seeks to extend the Beneficiary's employment as its CEO 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, originally denied the petition, concluding that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity under the extended petition.

We summarily dismissed the Petitioner's subsequent appeal because the record at the time of adjudication did not show that the Petitioner had submitted a brief or otherwise identified an erroneous conclusion of law or statement of fact in the Director's decision. The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner provides evidence that it submitted a timely brief in support of its appeal.

Upon *de novo* review, we will reopen the matter for the purpose of considering the appellate brief and the merits of the appeal. We will withdraw the Director's decision and remand the matter to the Director for entry of a new decision.

## I. MOTION REQUIREMENTS

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

The regulations state that "the official having jurisdiction may, for proper cause shown, reopen the proceeding." 8 C.F.R. § 103.5(a)(1)(i). This provision limits our authority to reopen the proceeding to instances where "proper cause" has been shown for such action. Thus, to merit reopening, the submission must not only meet the formal requirements for filing, but the petitioner must also show proper cause for granting the motion.

### B. Requirements for Motions to Reopen

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Also, 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

A motion to reconsider must state the reasons for reconsideration and 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, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). 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

The Petitioner submitted no brief or evidence with Form I-290B, Notice of Appeal or Motion, but stated that it would submit those materials within 30 days. When we reviewed the record of proceeding several months later, it did not include any supplement to the appeal. As a result, we summarily dismissed the appeal, because the appeal, as presented to us, did not identify any erroneous conclusion of law or statement of fact in the Director’s denial of the petition. *See* 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner submits a copy of an appellate brief with supporting exhibits. The Petitioner also provides a proof-of-delivery receipt from Federal Express as evidence that it timely submitted these materials to supplement the appeal but, for reasons the record does not explain, they did not reach the record of proceeding.

We will deny the motion to reconsider, because the Petitioner has not shown that the summary dismissal was incorrect based on the evidence of record at the time of the initial decision. The evidence of record, at that time, did not include any supplement to the appeal. Given the state of the record at the time, summary dismissal was consistent with USCIS regulations and policy.

We will grant the motion to reopen in part, because the recovered supplement to the appeal comprises new facts that were not available to us at the time of our prior decision, and the Petitioner’s timely submission of substantive appellate materials entitles the Petitioner to a decision on the merits.

*Matter of E-A-I-G- LLC*

After reviewing the entire record of proceeding, including the Petitioner's submissions on motion, we conclude that the record contains sufficient evidence to overcome the basis for the Director's decision. Specifically, the Petitioner has now established by a preponderance of the evidence that the Beneficiary would be employed in a qualifying executive capacity under the extended petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has sustained that burden with respect to this issue. The Director's decision is withdrawn.

### III. FOREIGN EMPLOYMENT FOR ONE CONTINUOUS YEAR

Although the Director's decision is withdrawn, we find insufficient evidence in the record to establish that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the initial L-1A petition filed on his behalf in January 2015. See 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) states, in pertinent part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

On the L Classification Supplement to Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that the Beneficiary was employed by its parent company, [REDACTED] from February 26, 2008, until January 31, 2015.

In its letter of support, the Petitioner stated that the Beneficiary served as the Chairman of the Board at the foreign entity since 2008. The Petitioner explained that the foreign entity was founded after demand for physiotherapy grew from the Beneficiary's management of [REDACTED] which he ran with his four brothers who were physicians in Libya. The Petitioner also mentioned that the Beneficiary is currently the head of the [REDACTED] in the [REDACTED] and a member of the Board of the [REDACTED] in [REDACTED] Germany.

The Petitioner submitted the Beneficiary's resume, dated November 2014, which lists his professional experience as follows:

#### Current Jobs

- Chairman of Board [REDACTED] Libya)
- Chairman of [REDACTED] Libya)

*Matter of E-A-I-G- LLC*

- [REDACTED] Libya)
- Member of Board [REDACTED] Libya)

Other Activities

- Member of Board [REDACTED] Egypt)
- Member of Executive Office; [REDACTED] contracts (Jordan, [REDACTED])
- Member of Board; [REDACTED] Germany)

Further, in reviewing this motion, we reviewed USCIS and U.S. Department of State records, which indicated that the Beneficiary applied for B1/B2 visas abroad in 2011, 2013 and 2014. On his nonimmigrant visa applications (Forms DS-160), submitted to the U.S. Department of State, the Beneficiary described his employment status as follows:

- On November 20, 2011, the Beneficiary listed his current employer as [REDACTED] and his occupation as “engineering.” Where asked to briefly describe his duties, the Beneficiary stated “duly chairman of [REDACTED] who is responsible for the overall welfare of the administration department, attends conference/meetings and promote quality service to all the clients.” Where asked if he had been previously employed, the Beneficiary solely listed his previous employer as [REDACTED] and his occupation as “engineering consultant” from January 1, 2006 to 2011.
- On December 5, 2013, the Beneficiary listed his current employer as [REDACTED] and his occupation as “engineering.” Where asked to briefly describe his duties, the Beneficiary stated “I’m the chairman of [REDACTED] and [REDACTED] I’m also member in [REDACTED].”
- DS-160 filed on August 15, 2014, the Beneficiary listed his current employer as [REDACTED] and his occupation as “engineering.” Where asked to briefly describe his duties, the Beneficiary stated “I’m chairman of [REDACTED] and [REDACTED].”

Upon review, the Beneficiary’s apparent concurrent employment with multiple companies and organizations undermines the Petitioner’s claim that the Beneficiary was a full-time employee of its Libyan parent company for at least one continuous year between January 2012 and January 2015. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the evidence discussed above, we cannot conclude that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the initial L-1A petition filed on his behalf in January 2015. For this reason, the petition cannot be approved.

However, as the Petitioner did not have notice of these deficiencies, we will remand the matter to the Director. The Director is instructed to request any additional evidence deemed warranted to determine whether the Beneficiary meets the foreign employment requirement and must allow the Petitioner to submit such evidence within a reasonable period of time.

#### IV. CONCLUSION

The Director's decision is withdrawn and the matter is remanded to the Director for the above stated reasons. 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, the Petitioner has not met that burden.

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

**FURTHER ORDER:** The motion to reopen is granted, and the decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of E-A-I-G- LLC*, ID# 47577 (AAO Oct. 25, 2016).