



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

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

MATTER OF A-O- LLC

DATE: SEPT. 29, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a convenience store and gas station, seeks to temporarily employ the Beneficiary as its general director under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 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 evidence of record did not establish that the Beneficiary would be employed in a managerial or executive capacity. The Petitioner submitted an appeal 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 and added that the Petitioner also did not establish that it had a qualifying relationship with the foreign entity. We provided a comprehensive analysis of the Director's decision, along with our findings on the Petitioner's qualifying relationship, and dismissed the appeal.

The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner submits a brief and additional evidence disputing our prior decision.

Upon review, the combined motion will be denied.

#### 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, 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. 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 4 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 that establish eligibility at the time the underlying petition or application was filed.”<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.

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

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<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.

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 AND ANALYSIS

### A. U.S. Employment in a Managerial or Executive Capacity

In denying the petition, the Director emphasized that the Petitioner provided an overly generalized description of the Beneficiary’s proposed duties and had not shown that he would function at a senior level within the organization’s hierarchy other than in position title. The Director further determined that, due to the limited number of U.S. employees, the Petitioner had not established that the Beneficiary would be able to perform primarily managerial or executive functions.

In dismissing the appeal, we found that the Petitioner had not provided sufficient information detailing the Beneficiary’s proposed duties at the U.S. company to demonstrate that his listed duties qualify him as a manager or executive. We noted that the position description was stated in broad terms and lacked sufficient detail to establish what the Beneficiary would be doing on a day-to-day basis and did not provide any meaningful insight into the nature of the tasks the Beneficiary is expected to perform. We also found that the Petitioner did not establish that the Beneficiary would have sufficient subordinate employees to relieve him from performing non-qualifying operational tasks.

On motion, the Petitioner states that the Beneficiary will be employed in an executive capacity in the United States, with oversight of the business and its 12 full-time and part-time employees. The Petitioner states that the Beneficiary’s proposed oversight of the Petitioner’s 12 employees, including two shift managers, proves that the Beneficiary’s duties are indeed executive in nature.

In support of its motion to reopen, the Petitioner resubmits the same description of the Beneficiary's proposed duties in the United States, but also adds specific tasks associated with each broad category or cluster of duties. The Petitioner then proceeded to further break down the percentages of time the Beneficiary will devote to each task listed within each of the broad categories or clusters of duties. The Petitioner also provided its payroll records from January 1, 2016, to March 31, 2016, indicating that it had 12 employees during that period.

In support of its motion to reconsider, the Petitioner cites to *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), specifically where we found that in order to determine whether a beneficiary's job duties will be primarily managerial in nature, an adjudicating officer must consider the nature and scope of the Petitioner's business. The Petitioner claims that if we examine the proposed duties as a convenience store and gas station general manager, we would find that the Beneficiary's proposed position is executive in nature. The Petitioner also specifically states that if we consider the reasonable needs of the Petitioner, as instructed in *Matter of Z-A-, Inc.*, we would also find that the Beneficiary's duties will be executive in nature.

#### 1. Motion to Reopen

Upon review, we find that the Petitioner provided new facts regarding the Beneficiary's proposed employment for consideration in its motion to reopen, but that these new facts do not establish eligibility. Namely, although the Petitioner provided additional specific tasks associated with each of the broad categories of the Beneficiary's proposed duties, it did not address our findings regarding its staffing at the time of filing the petition. We pointed out numerous discrepancies concerning its staffing levels and questioned whether the Beneficiary had subordinate employees to relieve him from performing non-qualifying operational and administrative duties, but the Petitioner has not addressed any of those concerns. Rather, the Petitioner now submits payroll documentation for a time period more than 8 months after the date of filing. 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). As such, we find that new facts submitted by the Petitioner do not establish eligibility for the visa requested and would not change the outcome of the case. The motion to reopen will be denied.

#### 2. Motion to Reconsider

Upon review, we find that the Petitioner did not properly state the reasons for reconsideration of our decision regarding the Beneficiary's proposed employment. The Petitioner briefly discusses its reasonable needs and staffing levels, concluding that "[i]f the AAO will examine the proposed duties through the lens of the Petitioner's needs and scope of operations, a convenience store and gas station, the AAO will indeed find that the Beneficiary's proposed duties are indeed executive as to the 'nature and scope of the Petitioner's business.'" However, we discussed the reasonable needs of

(b)(6)

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the Petitioner and the deficiencies in regards to its staffing on appeal and the issue will not be discussed again on motion. Although the Petitioner cites to a recent precedent decision issued by the AAO, the cited case is not applicable here. *Matter of Z-A-, Inc.* instructs that USCIS may consider the staffing of the entire qualifying organization when examining whether the Petitioner has sufficient staff to support a managerial position. In this case, the Petitioner has not asserted or provided evidence that the U.S. entity would be supported by staff of the foreign entity.

Therefore, we conclude that the documents constituting this motion do not articulate how our decision on appeal misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the appeal was rendered. The Petitioner has therefore not submitted any document that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be denied.

B. Qualifying Relationship

In dismissing the Petitioner's appeal, we also found that the Petitioner did not establish that it had a qualifying relationship with the foreign entity at the time of filing the petition. The Petitioner submitted a purchase and sale agreement for the foreign entity to purchase 51% of shares of the Petitioner. We found that, although this document was signed on April 10, 2015, prior to the filing of the petition on April 24, 2015, the closing date of the sale was scheduled for August 15, 2015, and it includes an escrow certification which states: "the purchase of shares of [REDACTED] is subject to [REDACTED] procuring an L-1A status on or before the closing date." We further found that, based upon the terms of the share purchase and sale agreement, the foreign entity's purchase of a majority ownership interest in the petitioning company was entirely contingent upon the Petitioner obtaining an approval of this petition. However, 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.

On motion, the Petitioner concedes that the purchase of the shares to establish the qualifying relationship was not completed until after the filing of the petition. However, the Petitioner states that USCIS does not require that the Petitioner provide evidence that it has actually purchased the proposed U.S. entity, but rather that the Petitioner provide evidence that it has entered into a stock purchase agreement to do so.

In support of its motion to reopen, the Petitioner submits evidence that it finalized the purchase of 51% of shares of the U.S. company by the foreign entity on October 28, 2015, and provided evidence that the foreign entity paid for its purchase on December 7, 2015.

In support of its motion to reconsider, the Petitioner cites to the "Understanding L-1 Requirements" page from [www.uscis.gov](http://www.uscis.gov), where it specifically states:

The new U.S. office must have a corporate relationship with your foreign entity abroad where you have been employed . . . . This means that the new U.S. office

must be a parent, affiliate, subsidiary or branch of the foreign entity, and that both the U.S. office and the foreign entity must continue to share common ownership and control.

The document then lists examples of how to demonstrate that the U.S. business has a qualifying relationship with a foreign entity, and states, “[i]f you are purchasing an existing business, provide a copy of your stock purchase agreement and/or any other relevant documentation.”

1. Motion to Reopen

Upon review, we find that the Petitioner provided new facts regarding its qualifying relationship with the foreign employer for consideration in its motion to reopen, but that such facts do not overcome our prior adverse decision. Specifically, although the Petitioner provided additional documentation to demonstrate that it finalized the purchase of 51% of the U.S. company’s shares by the foreign entity, it occurred after the date of filing of the petition and therefore, clearly establishes that the Petitioner did not have a qualifying relationship with the foreign entity at the time of filing the petition. The regulations at 8 C.F.R. § 214.2(l)(3)(i) specifically states that the petition shall be accompanied by “evidence that the Petitioner and the organization which employed or will employ the alien *are* qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.” 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). Here again, the new facts submitted are not sufficient to change the outcome of the case, and as such the motion shall be denied.

2. Motion to Reconsider

Upon review, we find that the Petitioner did not properly state the reasons for reconsideration of our decision regarding its qualifying relationship with the foreign employer. The Petitioner clearly concedes that it did not have a qualifying relationship with the foreign entity at the time of filing and references a vague informational USCIS website listing examples of evidence that can be submitted to demonstrate a qualifying relationship. Here, the Petitioner incorrectly assumes that the reference to a stock purchase agreement as evidence of a qualifying relationship includes an agreement that has not been finalized. The regulations are clear in that the Petitioner must establish that it had a qualifying relationship with the foreign entity at the time of filing the petition; an agreement and an obligation of funds by the foreign entity for purchase of 51% of the U.S. company’s shares at some future date is not sufficient to establish that the Petitioner and the foreign entity had a qualifying relationship at the time of filing.

We conclude that the documents constituting this motion do not articulate how our decision on appeal misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the appeal was rendered. The Petitioner has therefore not

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submitted any document that would meet the requirements of a motion to reconsider. Accordingly, 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. Accordingly, our previous decision will not be disturbed.

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

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

Cite as *Matter of A-O- LLC*, ID# 13780 (AAO Sept. 29, 2016)