



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

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

MATTER OF U-T-S- INC.

DATE: SEPT. 30, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a tattoo supply, import-export, and freight forwarding company, seeks to extend the Beneficiary's temporary employment as its vice president under the L-1A nonimmigrant visa classification for nonimmigrant 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, concluding that the evidence of record did not establish that the Beneficiary will be employed in a qualifying managerial or executive capacity. The Petitioner later filed an appeal, which we dismissed.

The matter is now before us again, on a motion to reconsider. In its motion, the Petitioner contends that we misinterpreted the Beneficiary's duty descriptions and mistakenly perceived discrepancies in the evidence submitted. The Petitioner states that the evidence "overwhelmingly supports the conclusion that the Beneficiary meets the criteria of a manager acting in an executive capacity."

Upon review, we will deny the 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 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”

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 asserts that we misinterpreted the Beneficiary’s duty descriptions and mistakenly perceived discrepancies between the job description the Petitioner submitted at the time of filing and the description it submitted in response to the Director’s request for evidence (RFE). The Petitioner contends that the differences we cite in our previous decision are not discrepancies, but rather represented the Petitioner’s elaboration of the initially described duties and also reflected changes in his responsibilities that took place over time. Further, the Petitioner states that the evidence “overwhelmingly supports the conclusion that the Beneficiary meets the criteria of a manager acting in an executive capacity.” The Petitioner emphasizes that the Beneficiary primarily participates in the management of the organization and that he develops goals and policies for the organization.

While we will address the Petitioner’s 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 motion to reconsider.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue before us is whether the evidence of record establishes that the Beneficiary would be employed in a qualifying managerial or executive capacity, as defined at section 101(a)(44) of the Act, as of the date of the petition extension.

In our previous decision, we concluded, as noted by the Petitioner, that there appeared to be material discrepancies between the Beneficiary's duty description provided in support of the petition and the duty description provided in response to the RFE. However, the Petitioner overlooks that we also set forth numerous other reasons for dismissing the appeal and that our decision was not based solely on discrepancies in the submitted position descriptions. For instance, we concluded that the Beneficiary's duties included a significant number of non-qualifying operational tasks such as determining the customers' equipment requirements, communicating with suppliers on the timing of shipping, managing accounts with freight forwarding companies, meetings with vendors, conducting a "daily market analysis," and handling all purchases and payments to vendors. Further, we noted that various submitted invoices and other transactional documents in the record included the Beneficiary's name as the Petitioner's primary contact person, supporting a conclusion that he would likely be primarily engaged in the performance of non-qualifying tasks.

In addition, we looked at factors beyond the Beneficiary's stated job duties, and found that the Petitioner had not provided any supporting evidence to demonstrate that the Beneficiary's subordinates would relieve him from performing non-qualifying duties. We also discussed the fact that the Petitioner had not clearly described the nature of the business, as it asserted that it is engaged in freight forwarding, while the evidence reflected that it was purchasing tattoo supplies for shipment back to the foreign entity. Finally, we noted that the Petitioner acknowledged that its organizational structure was top heavy and that the Beneficiary's subordinate managers were performing the work of front line personnel rather than supervising subordinate personnel.

On motion, the Petitioner addresses only one of the evidentiary issues referenced in our decision and does not submit additional evidence to overcome these other discrepancies and deficiencies. Specifically, the Petitioner only addresses our finding that there was an apparent discrepancy between the Beneficiary's job description provided in support of the petition and the job description submitted in response to the RFE. Otherwise, the Petitioner only vaguely indicates that the Beneficiary "participates in the management of the organization," noting that he "has developed goals and policies." However, the Petitioner does not articulate the goals and policies he has implemented or will establish. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of their daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Indeed, to the extent the Petitioner has provided detailed duties, these indicate the Beneficiary's performance of non-qualifying operational duties, as discussed above, a deficiency which the Petitioner does not address on motion. Further, the Petitioner does not articulate how we acted in error in concluding that the Beneficiary would likely be primarily engaged in non-qualifying operational tasks or that its organizational structure was insufficient to support the Beneficiary in a managerial or executive capacity.

As noted in our previous decision, the Petitioner must show that the beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. See, e.g., *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533. Here, the Petitioner has offered little evidence beyond its own assertions to demonstrate that the Beneficiary is primarily engaged in qualifying managerial or executive level tasks. 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)).

Further, we do not concur with the Petitioner's assessment that we misinterpreted differences in the two job descriptions submitted for the Beneficiary. However, upon review of the two job descriptions, the Petitioner did not simply elaborate on the Beneficiary's initial duty description when responding to the RFE. Rather, the Petitioner included a new set of duties which contained some noted differences when compared to the original job description.

For instance, the duty description provided in response to the RFE stated that the Beneficiary devotes twenty percent of his time to managing "the main connection between the foreign corporations and the [Petitioner] in order to determine the best equipments [*sic*] required by customers in Venezuela and others [*sic*] Latin American countries." However, the Beneficiary's duty description provided at the time of filing did not mention this task. Likewise, the Petitioner stated in response to the RFE that the Beneficiary spends 10 percent of his time communicating "with suppliers to coordinate meetings in order to establish price agreements and times of shipping of all merchandise," but the Beneficiary's original duty description makes no mention of the Beneficiary's involvement in coordinating shipping. The Petitioner stated at the time of filing that the Beneficiary would spend 15 percent of his time directing and coordinating the organization's financial and budget activities and another 15 percent reviewing reports submitted by his managerial staff, again, duties that are not specifically mentioned in his duty description provided in response to the RFE. As such, these differences do not reflect further elaboration or minor differences, but significant discrepancies which have not been specifically addressed by the Petitioner on motion. As noted in our previous decision, 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).

Further, the Petitioner's assertion that differences in the duty descriptions were a reflection of natural changes in his duties over time is not persuasive. Only three months passed between the submission of the initial evidence and the RFE response and the two duty descriptions were almost completely different, as discussed in detail above. A petitioner must establish eligibility at the time of filing and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1).

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For these reasons, 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.

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, the motion will be denied and our previous decision will not be disturbed.

ORDER: The motion to reconsider is denied.

Cite as *Matter of U-T-S- Inc.*, ID# 10581 (AAO Sept. 30, 2016)