



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

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

In Re: 29096691

Date: NOV. 16, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, an importer and exporter of clothing and footwear, seeks to temporarily employ the Beneficiary as its chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. 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 a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding the record did not establish that the Beneficiary would be employed in a managerial or executive capacity, and we dismissed the Petitioner's subsequent appeal of that decision. The matter is now before us on a motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As noted above, the Director denied the petition based on a determination that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity as defined at sections 101(a)(44)(A) and 101(a)(44)(B) of the Act. We dismissed the appeal, noting that the Petitioner's generic duty description for the Beneficiary did not sufficiently substantiate that he would have been employed in an executive-level capacity as of the date the petition was filed, and that the Petitioner's conflicting statements and insufficient documentation did not establish that it was sufficiently developed as of the date the petition was filed to support the Beneficiary in an elevated position where he would be primarily focused on broad goals and policies, rather than day-to-day

operations.<sup>1</sup> Our prior decision is part of the record of proceedings and is incorporated herein by reference.

On motion, the Petitioner does not adequately address these deficiencies and instead contests the correctness of our prior decision based on the assertion that both we and the Director erred by not treating the U.S. organization as a new office. Specifically, the Petitioner contends that both the Director's denial and our appellate decision were incorrect because its U.S. organization "should never have been evaluated under the standards of an on-going active office."

The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). We note that the Petitioner checked the box "No" when asked if the Beneficiary was coming to the United States to open a "new office" in Section 1, No. 12 of the Form I-129 L Classification Supplement. In addition, the Petitioner noted in a parenthetical next to this question: "Office in U.S. has been operating for over one year."<sup>2</sup> As the Petitioner did not seek treatment as a new office at the time of filing, it does not warrant treatment under the new office regulations. Therefore, we and the Director did not err by declining to evaluate the U.S. organization as a new office.

Moreover, the Petitioner does not directly address the conclusions we reached in our prior decision. It generally objects to the denial of the petition and subsequent dismissal of its appeal, claims that the Petitioner and Beneficiary are eligible for the requested benefit, and asserts that the petition should have been approved based on the evidence of record. The Petitioner does not, however, provide reasons for reconsideration or demonstrate that we misapplied the law or USCIS policy in our dismissal of its appeal. Therefore, the Petitioner's motion to reconsider does not meet the requirements stated at 8 C.F.R. § 103.5(a)(3).

For the reasons discussed, we conclude that the Petitioner has not shown proper cause for reconsideration of our prior decision. As the motion does not meet all the requirements of a motion to reconsider, it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

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

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<sup>1</sup> Because the Petitioner did not claim that the Beneficiary would be employed in a managerial capacity on appeal, we restricted our analysis to whether the Beneficiary would be employed in an executive capacity.

<sup>2</sup> The U.S. company was established as a limited liability company in California in  2020. The instant petition was filed in June 2022.