



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

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

In Re: 18347872

Date: SEP. 21, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an auto and boat dealership, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that: 1) the Beneficiary was employed abroad for at least one year in the three years preceding his entry into the United States as a nonimmigrant, 2) the Beneficiary had been employed abroad in a managerial or executive capacity, 3) the Beneficiary would be employed in the United States in an managerial or executive capacity, and 4) the Petitioner had established its ability to pay the Beneficiary's proffered wage.

The Petitioner then filed an appeal. We dismissed the appeal, concluding the Petitioner did not demonstrate that the Beneficiary was employed abroad for at least one year in the three years preceding his entry into the United States to work for the Petitioner. We also agreed with the Director's conclusion that the Beneficiary would not be employed in the United States in a managerial or executive capacity and declined to address the remaining grounds of denial given that the identified grounds for ineligibility were dispositive.¹ The matter is now before us on a motion to reopen and a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. MOTION REQUIREMENTS

¹ The sole issue we will discuss in this decision is whether the Petitioner established that the Beneficiary was employed abroad for at least one year in the three years preceding his entry into the United States as a nonimmigrant. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the other bases of our prior appeal dismissal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the Petitioner has shown “proper cause” for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. A motion to reconsider must include an allegation of material factual or legal errors in the prior decision, supported by pertinent authority, and if there has been a change in law, a reference to the relevant statute, regulation, or precedent and an explanation of how the outcome of the decision is materially affected by the change. *Matter of O-S-G*, 24 I&N Dec. 56 (BIA 2006).

II. ANALYSIS

A. Motion to Reopen

The sole issue we will address on motion is whether the Petitioner has established that the Beneficiary was employed by the foreign employer for at least one year in the three preceding his entry as a nonimmigrant into the United States per 8 C.F.R. § 204.5(j)(3)(i)(B).²

In our appeal decision, we emphasized that the Director specifically requested the Petitioner submit copies of foreign employer payroll records pertaining to the Beneficiary for the relevant one-year period.³ However, we determined that the evidence submitted by the Petitioner in response to the Director’s the request for evidence (RFE) did not constitute a payroll record sufficient to demonstrate that the Beneficiary was employed by the foreign employer for the required one year. We emphasized that the Petitioner’s failure to submit this requested evidence precluded a material line of inquiry, and constituted grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). We stated that it was reasonable

² The Petitioner asserts that the Beneficiary was previously employed by its parent company, [REDACTED] in an executive capacity since January 2005 and that he was transferred to his current position as its president in 2007. USCIS records show that the Petitioner first entered the United States in L-1A status to work for the Petitioner on June 28, 2007.

³ As discussed in our prior decision, if a beneficiary entered the United States to work for a qualifying entity as a nonimmigrant (for example in H-1B or another work-authorized status), USCIS will reach back three years from the date of his or her admission to determine whether he or she had the requisite one year of employment. *Matter of S-P- Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018); 8 C.F.R. § 204.5(j)(3)(i)(B). In his decision, the Director used the Beneficiary’s entry in B-2 visitor status on January 14, 2006, as the end point of this three-year period (January 14, 2003 – January 13, 2006). However, since this entry was not for the purpose of working for the same employer or for a subsidiary or affiliate of the foreign employer as a nonimmigrant, we did not use this date of entry to determine the relevant three-year period during which the one year of foreign employment must be established. *See id.* Instead, we concluded that the requisite three-year period was from June 28, 2004, to June 27, 2007, the day before the Beneficiary’s initial entry in L-1A status to work for the Petitioner. The Petitioner concurs with this determination on motion.

for the Director to have requested this evidence to demonstrate his employment abroad from January 1, 2005, to January 1, 2006, and that its non-existence or unavailability created a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).⁴ In addition, we emphasized that the Petitioner did not explain on appeal why the Beneficiary was not included in the foreign employer's organizational charts submitted in support of the petition and in response to the Director's RFE. We indicated that this evidence was inconsistent with provided support letters describing his role with the foreign employer and that this inconsistency raised by the Director had not been resolved on appeal with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For these reasons, we concluded that the Petitioner had not established that the Beneficiary was employed by foreign employer for at least one year in the three years prior to his entry as an L-1A nonimmigrant.

On motion, the Petitioner submits additional evidence it contends demonstrates that the Beneficiary was employed by the foreign employer for at least one year. Specifically, the Petitioner provides documentation from the "BPS Social Security Institute," it explains as a "state-owned...social security institute," reflecting that the Beneficiary was paid by the foreign employer from March 2003 through January 2005. The Petitioner asserts that the provided foreign employment contract signed in December 2004 and the provided foreign employer "payroll records" from January 2005, through January 2006, demonstrate that the Beneficiary was employed by the foreign employer for the required one year in the three preceding his entry into the United States on June 28, 2007.

The Petitioner has not submitted sufficient new evidence to establish that our prior decision to dismiss the appeal was in error. First, the Petitioner was put on notice by the Director to submit evidence to establish that the Beneficiary was employed abroad for at least one year during the three year qualifying period and given a reasonable opportunity to provide this evidence in response to the Director's RFE. The Petitioner does not articulate on motion why this evidence was not reasonably available at the time of the RFE. As such, we are not required to consider this evidence now on motion. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) and *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988)

Regardless, even if we consider the evidence submitted on motion, the Petitioner provides foreign documentation from a social security agency in the country of the foreign employer showing payments to the Beneficiary by the foreign employer from March 2003 to January 2005. However, the requisite three-year period within which the Petitioner was required to demonstrate the Beneficiary's foreign employment for at least one year was from June 28, 2004, to June 27, 2007, the day before the Beneficiary's initial entry in L-1A status to work for the Petitioner. Therefore, the documentation submitted on motion only reflects payments made to the Beneficiary by the foreign employer during the applicable three-year qualifying period from June 2004 through January 2005, or for only approximately six months.

Further, the Petitioner does not explain why the provided documentation from the foreign social security institute does not reflect at least one full year of employment with the foreign employer, including payments during the Beneficiary's asserted employment from January 2005 to January 2006.

⁴ We also noted that the Petitioner submitted foreign employer payroll records for a period during which it did not claim that the Beneficiary was employed with the company.

The fact that payments to the Beneficiary from the foreign employment after January 2005 are not included in the foreign social security documentation is particularly questionable since this document reflects his payroll history during the period of “04/1996-02/2021.” As such, the Petitioner provides documentation on motion that leaves only further uncertainty as to whether he was employed abroad for at least one year as claimed during the three-year qualifying period. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond this new evidence, the Petitioner only resubmits assertions we addressed in our previous appeal decision. For instance, the Petitioner again points to foreign employer “payroll records.” However, as the Director, as we, previously discussed, the asserted foreign payroll records are not as asserted, but merely a submitted list of check numbers and the dates these asserted checks were issued to the Beneficiary. There is no documentary evidence of payments from the foreign employer being issued to, and received by, the Beneficiary during the claimed one year of foreign employment. The Petitioner’s continued failure to submit this evidence leaves only further question as to the Beneficiary’s claimed foreign employment. Again, the Petitioner’s failure to submit this requested evidence continues to preclude a material line of inquiry and constituted grounds for denying the petition, and our dismissal of the appeal. 8 C.F.R. § 103.2(b)(14). The Petitioner does not indicate on motion why our prior dismissal of the appeal on this basis was in error.

In addition, we previously noted that the Petitioner did not explain on appeal why the Beneficiary did not appear in the foreign employer’s organizational charts submitted in support of the petition and in response to the Director’s RFE. We indicated that this evidence was inconsistent with its support letters describing the Beneficiary’s role with the foreign employer and that this inconsistency raised by the Director had not been resolved on appeal with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. Once again, the Petitioner does not address this material discrepancy on motion.

Therefore, for the foregoing reasons, the Petitioner has not submitted sufficient new facts supported by affidavits or documentary evidence to demonstrate that our prior dismissal of the appeal was in error or to establish the Beneficiary’s eligibility for the benefit sought. 8 C.F.R. § 103.5(a)(2). As such, the motion to reopen must be dismissed.

B. Motion to Reconsider

A motion to reconsider must establish that our 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). As indicated in the prior section, the Petitioner only points to the previously submitted evidence and asserts that this demonstrates that the Beneficiary was employed abroad for at least one year in the three preceding his entry into the United States to work for the Petitioner. However, on motion, the Petitioner does not specifically articulate why our prior decision to dismiss the appeal was based on an incorrect application of law of policy at that time. For this reason, the motion to reconsider will also be dismissed.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsidering our prior decision. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.