



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

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

In Re: 8854326

Date: JULY 7, 2020

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, claiming to operate as an international trade organization, seeks to continue the Beneficiary's temporary employment as president under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner would employ the Beneficiary in a managerial or executive capacity under the extended petition and that the employment would be temporary. We declined to address the second ground and dismissed the appeal based on the finding that the Petitioner had not established that it would employ the Beneficiary in an executive capacity.

The matter is now before us on a motion to reconsider. Upon review, we find that the Petitioner does not meet the motion requirements. Therefore, we will dismiss the motion.

I. MOTION REQUIREMENTS

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. A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In support of the instant motion, the Petitioner asserts that we incorrectly relied on its staffing size as the "decisive factor" without taking into consideration the Petitioner's reasonable needs as required by section 101(a)(44)(C) of the Act. We disagree and point to our comprehensive assessment of the Beneficiary's job descriptions, which the Petitioner provided first in support of the petition and later in response to the Director's request for evidenced. Namely, we found that the Petitioner offered

information that lacked “meaningful substantive content” and did not delineate “the actual tasks the Beneficiary would carry out within the context of its various business pursuits.” Thus, although we commenced our analysis with a discussion of the Petitioner’s staffing, our decision did not rest on that factor alone. As stated, we pointed to and elaborated on the Beneficiary’s deficient job descriptions. However, the Petitioner does not address or acknowledge these critical evidentiary deficiencies in the present motion.

Further, section 101(a)(44)(C) of the Act requires us to “take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function.” Although we have long interpreted the statute to prohibit discrimination against small or medium-size businesses, we have also consistently interpreted the Act to require petitioners to establish that a beneficiary’s position “primarily” consists of managerial or executive duties, and that it has sufficient personnel to relieve a beneficiary from performing operational and administrative tasks. As such, although the Petitioner’s reasonable needs have been considered, those needs do not supersede its burden of having show that the Beneficiary will be “primarily” employed in a managerial or executive capacity as required by the statute. *Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir. 2008).

In sum, we provided the Petitioner with a totality of the evidence analysis in which we considered not only the Petitioner’s staffing, but also the Beneficiary’s job duties within the scope of the Petitioner’s operation. The Petitioner’s contention that we did not consider its reasonable needs and relied exclusively on the size and salaries of its staff is not supported by the record.

In light of the above, we find that the Petitioner’s motion does not warrant reconsideration.

ORDER: The motion to reconsider is dismissed.