



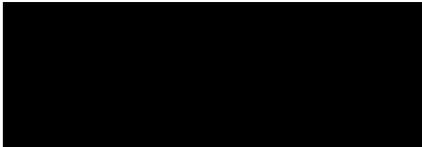
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U.S. Department of Justice

Immigration and Naturalization Service

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invasion of persons' privacy.~~

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: VERMONT SERVICE CENTER

Date: 9 0 APR 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reopen and to reconsider. The motion will be dismissed.

The petitioner is engaged in the business of alternative health care therapies. It seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary would be employed in an executive or managerial capacity. The Associate Commissioner affirmed the director's decision.

On motion to reopen the proceeding, the petitioner submits a letter signed by its president (the beneficiary) dated June 17, 2000. The petitioner also submits, in response to the Associate Commissioner's decision, documentary evidence to demonstrate the employment of two consultants. The documentary evidence consists of the following:

Internal Revenue Service (IRS) Form 1099 - Miscellaneous Income issued to an individual identified as a consultant for the year of 1998 in the amount of \$1,878.

IRS Form W-2 Wage and Tax Statement issued to an individual identified as a consultant for the year of 1998 in the amount of \$3,000.

IRS Form W-2 Wage and Tax Statement issued to an individual identified as a consultant for the year of 1997 in the amount of \$780.

Copies of checks issued to an individual identified as a consultant beginning in October of 1998 through March 1999.

Copies of checks issued to an individual identified as a consultant dated October 1997 in the amount of \$780, January 1998 in the amount of \$810 and July 1998 in the amount of \$1068.

8 CFR 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 CFR 103.5(a)(2). The checks issued in 1997 and January of 1998 and the IRS Form 1099 for 1997 were available at the time the petition was filed in June of 1998 and could have been discovered or presented in the previous proceeding. This evidence will not be considered "new" and will not be considered a proper basis for a motion to reopen.

In addition, the amount of monies paid to the consultant in 1997 and in January of 1998 are not indicative of a full-time consultant but instead of an individual working on a part-time and intermittent basis. The information regarding the part-time employment of a consultant does not contribute to a finding that the beneficiary at the time of the filing of the petition was relieved from performing non-qualifying duties.

The evidence of wages and monies paid to consultants after the filing of the petition in June of 1998 also will not be considered in this motion to reopen. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Though it is not clear from the record that the petitioner was requested to proffer the underlying documentary evidence demonstrating employment of the consultants, the subsequent employment of consultants after the petition was filed does not contribute to the beneficiary's eligibility at the time the petition was filed.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323 (1992) (citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Furthermore, 8 CFR 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and 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, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. As noted above, the documents submitted with the motion are

insufficient to establish that the beneficiary's duties and responsibilities were managerial or executive in nature at the time of filing the petition. In addition, the petitioner does not assert that the previous decisions were based on an incorrect application of law or Service policy. The petitioner's motion to reconsider will be dismissed.

Finally, it should be noted for the record that, unless the Service directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 CFR 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.