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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

File: EAC 99 195 50140 Office: VERMONT SERVICE CENTER Date: AUG 16 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:
[Redacted]

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. Weimann, Director
Administrative Appeals Office

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

The petitioner is a corporation engaged in the business of importing, marketing, and distributing textiles. It seeks to employ the beneficiary as its president and general manager. Accordingly, it seeks to classify 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 had been employed in an executive or managerial position for the overseas entity or would be employed in a primarily executive or managerial capacity for the United States entity. The Associate Commissioner affirmed the director's decision on appeal.

On motion, counsel for the petitioner submits a letter from the petitioner that provides additional details regarding its subordinate staff and the subordinate staff of the foreign entity. Counsel requests that the Administrative Appeals Office grant the motion and the underlying petition.

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 evidence the petitioner submits was previously available and could have been discovered or presented in the previous proceeding. The director specifically requested the petitioner provide evidence of the duties performed by each of the petitioner's employees. However, a comprehensive description was not provided. "Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition." 8 C.F.R. 103.2(b)(14). The director determined that the record did not clearly establish that the beneficiary had been or would be employed in a primarily executive or managerial capacity. The director specifically noted that the petitioner had not provided a comprehensive description of the beneficiary's duties for the petitioner and had simply stated that the beneficiary's duties for the foreign entity were executive and managerial in nature.

On appeal the petitioner again failed to provide additional comprehensive detail regarding the duties of its employees. The petitioner has been given several opportunities to provide

evidence regarding its employee's duties and the beneficiary's duties for the foreign entity but has not done so. Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. Matter of Soriano, 19 I&N Dec. 764 (BIA 1988). As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

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.

Counsel has titled the petitioner's motion a "motion to reopen and reconsider" but has not provided any basis for a motion to reconsider.

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.

Other than the title of the motion, counsel has not provided any pertinent precedent decisions that establish that the previous decisions were based on an incorrect application of law or Service policy. As such, if counsel intended this motion to be a motion to reconsider, the motion has failed to state any reasons to support such a motion and the motion 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.