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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: [Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 12 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

Myra L. Rosen
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the preference visa petition and the Associate Commissioner dismissed a subsequent appeal. The matter is now before the Associate Commissioner for Examinations on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a Pennsylvania corporation that claims to be engaged in the development and sale of computer technology. It seeks to employ the beneficiary as its accounting and financial manager and, therefore, endeavors to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner failed to establish that it currently employed and would continue to employ the beneficiary in a primarily executive or managerial capacity. The Associate Commissioner affirmed the director's reasoning in his October 10, 2000 dismissal of the appeal.

On motion, counsel states that he will send a brief and/or evidence within 30 days. It is noted that counsel made this statement on November 8, 2000 and as of this date, no additional evidence has been received into the record. Therefore, the record is considered complete.

8 C.F.R. 103.5(a) states, in pertinent part:

- (2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .
- (3) *Requirements for motion to reconsider.* 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.
- (4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. . . .

The petitioner's motion does not meet applicable requirements. Counsel neither states the new facts to be proved nor states the reasons for reconsideration. Instead, counsel explains in a November 8, 2000 letter that the petitioner shall submit new facts

to be proved and other documentary evidence within 30 days. While 8 C.F.R. 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or additional evidence in conjunction with the filing of an appeal, there is no similar provision for a motion to reopen or reconsider; the new facts or reasons for reconsideration must comprise the motion. As neither the petitioner nor counsel provides new facts for the Service to consider regarding whether the proffered position can be classified as a multinational executive or managerial position, the motion does not meet applicable requirements as outlined in 8 C.F.R. 103.5(a). Accordingly, the motion will be dismissed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed.