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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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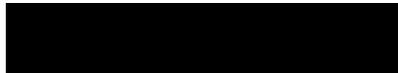


MAY 13 2002

File: [Redacted] Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:



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, Texas 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 importing and exporting heavy duty and agricultural equipment. 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 the beneficiary dated March 9, 2001 that lists individuals by job title and duties. The list includes three managers, a director, two salesmen and four employees and their purported duties. The petitioner also attaches a re-stated description of the beneficiary's functions and ascribes a percentage of time to each of the four functions. The petitioner also attaches its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for 2000.

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). In the record before the director, the petitioner claimed to employ four individuals. Its organizational chart reflected that the company anticipated hiring ten individuals. On motion, the petitioner is now claiming to employ ten individuals. The petitioner's list of ten employees does not indicate the date each employee was hired. If the ten individuals on the petitioner's list were all hired prior to the filing of the petition, information regarding their employment would have been available and should have been submitted at that time. Any information submitted regarding individuals hired before filing the petition and not submitted to the director will not be considered new on motion and will not be considered a basis to reopen the proceeding.

If some or all of the individuals were hired after the filing of the petition, their employment also will not be considered in the 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." The subsequent employment of individuals after the petition was filed does not contribute to the beneficiary's eligibility at the time the petition was filed and thus is not considered a basis to reopen a proceeding. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

For the same reasons, the re-stated description of the beneficiary's functions will not be considered "new" and will not be considered a basis to reopen this proceeding.

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.

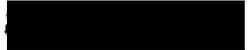
8 CFR 103.5(a)(2) states, in pertinent part:

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.

Although counsel has submitted a motion entitled "Motion to Reconsider," counsel does not submit any document that would meet the requirements of a motion to reconsider. Counsel simply provides the petitioner's organizational chart. Counsel does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider.

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.