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U.S. Department of Homeland Security

Citizenship and Immigration Services

BH

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536

[REDACTED]

File: WAC 00 022 51252

Office: CALIFORNIA SERVICE CENTER

OCT 09 2003  
Date

IN RE: Petitioner:  
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)

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based visa petition was denied by the Director, California Service Center. The director's decision to deny the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion will be dismissed.

The petitioner is a company organized in the State of California in 1991. It is engaged in importing and selling furniture and accessories. It seeks to employ the beneficiary as its marketing manager. The petitioner endeavors 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 regulation at 8 C.F.R. § 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.

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 [CIS] 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.

On motion, counsel for the petitioner submits a letter stating that the petitioner has provided new facts including the specific job duties of the petitioner's employees and minutes of a board meeting appointing the beneficiary vice-president in January 2002. However, the evidence submitted was previously available and could have been discovered or presented in the previous proceeding. It is further noted that the director requested a description of the job duties for those employees under the beneficiary's supervision and such descriptions were not forthcoming. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the description of the beneficiary's subordinate employees will not be considered "new" and will not be considered a proper basis for a motion to reopen. Further, the appointment of the beneficiary to the position of vice-president in 2002 is not relevant to this proceeding. A 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).

Neither counsel nor the petitioner states reasons for reconsideration or sets out pertinent precedent decisions establishing that the decision was based on an incorrect application of law or CIS policy.

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 C.F.R. § 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 AAO will not be disturbed.

**ORDER:** The motion is dismissed.