



U.S. Citizenship
and Immigration
Services

B-4



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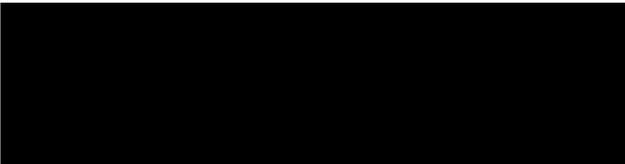
JUL 7 2004

IN RE: Petitioner:
Beneficiary:



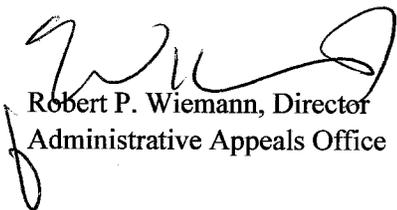
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Director, California Service Center denied the employment-based visa petition. 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 reconsider. The motion will be dismissed.

The petitioner is a corporation organized in the State of California in June 1998. It claims it operates a Burger King franchise. It seeks to employ the beneficiary as its general manager. Accordingly, 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 director determined that the petitioner had not established that: (1) the proffered position is in a primarily managerial or executive capacity; or, (2) that a qualifying relationship exists between the petitioner and the foreign entity. The AAO affirmed the director's decision.

On motion, counsel for the petitioner asserts that the AAO decision is incorrect as a matter of law. Counsel cites "Section 204.5(j) of the Regulations," generally and "Section 204.5(j)(2) of the Regulations," in particular to support the petitioner's reason for reconsideration. Counsel also submits partial records of the petitioner's I-129 petition for the beneficiary's intracompany transferee classification, a current organizational chart, payroll records, a description of the beneficiary's job title and time distribution, and a map showing the route between the petitioner's two operational sites. Counsel does not submit sufficient material to provide a basis to reopen the prior proceeding.

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." 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. The petitioner's current organizational chart, payroll records, description of the beneficiary's job duties, title, and time distribution, and map are not documents that are considered new. The petitioner had the opportunity to describe the beneficiary's duties and time distribution in the prior proceedings. The petitioner's submission of the information was reviewed and found inadequate in the July 17, 2003 AAO decision. The petitioner's current organizational chart, payroll records, and map are not relevant to this proceeding. As the AAO observed, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Furthermore, the regulation at 8 C.F.R. § 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 [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.

Counsel does not cite any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy. Counsel's reference to the Act is noted, but the Act and relevant case law were properly considered when the AAO issued its decision.

Counsel also appears to reference prior adjudications including the petitioner's submission of L-1A intracompany transferee petitions on behalf of this beneficiary. Counsel appears unaware that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). Counsel's claim that prior adjudications did not consider the lack of the beneficiary's managerial or executive capacity is not relevant to this proceeding. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

In this matter, the AAO properly reviewed the director's decision and the record supporting the director's decision. The AAO applied the applicable burden of proof. Counsel has not submitted any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy.

The AAO acknowledges counsel's request for oral argument. However, the regulations provide that the requesting party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel sets forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Of note, 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 and to reconsider will be dismissed.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); Section 291 of the Act, 8 U.S.C. § 1361. The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Here, that burden has not been met.

ORDER: The motion is dismissed.