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U.S. Citizenship and Immigration Services

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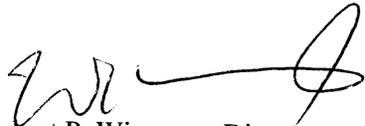
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER:
[Redacted]

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

DISCUSSION: The director denied the employment-based preference visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed. The petition will be denied.

The petitioner is a California company that seeks to employ the beneficiary as its general manager. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager 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: (1) the petitioner had not been doing business for at least one year at the time of filing the petition; (2) the beneficiary was not employed in a managerial or executive capacity for at least one year in the three years immediately preceding his entry into the United States in a nonimmigrant status; (3) the proffered position in the United States is not in an executive or managerial capacity; and (4) the petitioner and the alleged foreign entity do not share a qualifying relationship. In its July 8, 2003 decision, the AAO found that the petitioner had been doing business for at least one year prior to the petition filing, and it withdrew the director's comments concerning this issue. The AAO, however, affirmed the remaining grounds for denying the petition.

On motion, counsel submits a brief and the petitioner submits additional evidence.

The petitioner's submission of additional evidence does not satisfy the requirements of a 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. 8 C.F.R. § 103.5(a)(2). 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. *Cf.* 8 C.F.R. § 1003.23(b)(3).

The evidence submitted with the motion does not contain new facts. Regarding the beneficiary's foreign and U.S. employment, the AAO notes that the petitioner submits two organizational charts (one depicting the U.S. operations and one depicting the beneficiary's employment overseas) and a copy of one DE-6 form. The director requested all of these documents in a previous request for evidence (RFE); however, the petitioner failed to submit the items at that time and now submits them on motion. The AAO will not now consider this evidence because 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 was adjudicated. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Even if the AAO could consider the organizational charts and DE-6 form that the petitioner submits on motion, this evidence would be of no value. The information in the evidence pertains to the company's operations subsequent to the filing of the I-140 petition. 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). When determining whether a particular position is primarily managerial or executive, the AAO will only consider evidence that pertains to the petitioner's organizational structure as of the filing date of the petition. *See* 8 C.F.R. § 103.2(b)(12).

In addition, counsel's statements regarding the beneficiary's job duties in his U.S. and overseas positions are not persuasive. In his brief, counsel ascribes job duties to the beneficiary, many of which the petitioner failed to present earlier in the proceedings. Counsel's statements on motion regarding the beneficiary's job responsibilities and his level of authority are not evidence and thus are not entitled to any evidentiary weight. See *INS v Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the petitioner has not established that the beneficiary's employment in the United States or in France meets the definition of managerial or executive capacity.

Regarding the issue of whether a qualifying relationship exists between the petitioner and the foreign entity, counsel requests the AAO to consider a new ownership structure of both companies that allegedly came into effect in August 2003. Again, 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 supra*. The new ownership structure is immaterial to this proceeding as it occurred subsequent to the filing of the petition. See 8 C.F.R. § 103.2(b)(12). In addition, the petitioner did not present any documentary evidence to show that Patmart Corporation actually owns the U.S. and foreign entities. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As the additional evidence fails to contain new material facts, the evidence submitted is not new for the purpose of a motion to reopen.

The evidence also fails to satisfy the requirements of a motion to reconsider. A motion to reconsider must: (1) 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 Citizenship and Immigration Services (CIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Although counsel refers to two precedent decisions and several nonprecedent decisions, nothing in his brief or in the evidence that the petitioner submits establishes that the director's decision was incorrect; neither the director nor the AAO misapplied the law or CIS policy.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, 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. The previous decision of the Administrative Appeals Office, dated July 8 2003, is affirmed. The petition is denied.