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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B4

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date: SEP 22 2014

IN RE:

Petitioner:

[Redacted]

Beneficiary:

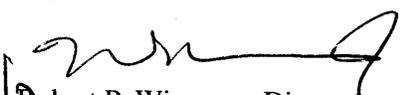
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[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 Texas corporation that seeks to employ the beneficiary as its president and chief executive officer (CEO). The petitioner, therefore, endeavors to classify him 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 the beneficiary's foreign employment and the proffered position were not in an executive or managerial capacity. On appeal, counsel submitted additional evidence, but the AAO concurred with the director that the beneficiary's foreign and U.S. jobs were not in a managerial or executive capacity. The AAO also noted beyond the decision of the director that there was no evidence that: (1) the petitioner had the ability to pay the proffered wage; and (2) the petitioner and the alleged foreign entity shared a qualifying relationship.

On motion, counsel submits a brief and the petitioner submits additional evidence. The petitioner submits a list of its employees, copies of the approval notices for the beneficiary's L-1A status, one copy of the petitioner's 2001 unemployment tax return (Form 940-EZ); and copies of its bank statements. In his brief, counsel lists the beneficiary's job duties for the foreign and U.S. entities. Counsel also states that the petitioner's tax returns reflect its ability to pay the beneficiary's salary. Counsel does not address the AAO's assertion that the record did not contain any evidence that the foreign entity actually paid for its ownership interest in the petitioner.

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). Generally, the new facts must be material, and were not available and could not have been discovered or presented earlier in the proceedings. *See* 8 C.F.R. § 1003.23(b)(3). Here, the list of the beneficiary's job duties for the U.S. and foreign entities as well as the list of the petitioner's employees cannot be considered new because both lists could have been presented earlier in the proceeding. The unemployment tax return is not material because it does not contain any information about the petitioner's assets and liabilities, which relate directly to its ability to pay the proffered wage. Finally, both the petitioner and counsel fail to address the AAO's comments regarding the relationship between the petitioner and the alleged foreign entity. 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). Neither counsel nor the petitioner supports the assertions by any pertinent precedent decisions, or establish that the director misinterpreted the evidence. All parties also fail to address the AAO's discussion of the evidence regarding the relationship between the petitioner and the alleged foreign entity.

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 March 17, 2003, is affirmed. The petition is denied.