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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

[Redacted]

PETITION:

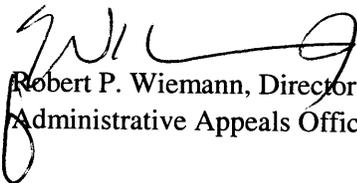
Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision 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, Vermont Service Center, denied the employment-based visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed 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 New York in September 1996. It claims to trade in general merchandise and to develop real property. It seeks to employ the beneficiary as its president. 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 the beneficiary was employed in a qualifying executive or managerial capacity with a qualifying organization abroad or that the beneficiary would be employed in a managerial or executive capacity for the United States entity. The AAO affirmed the director's decision on appeal in its decision dated December 16, 2002.

On a motion received February 10, 2003, counsel for the petitioner requests that this matter be reopened and reconsidered. Counsel submits his statement and a statement signed by the petitioner's vice-president. Both statements indicate that the petitioner and beneficiary have been unable to locate their former counsel or the petition and supporting documents previously submitted. Counsel and the petitioner's vice-president request an additional 30 days to submit a brief to address the AAO decision.

To date, careful review of the record reveals no subsequent submission; all other documentation in the record predates counsel's motion request.

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."

The regulation at 8 C.F.R. § 103.5(a)(3) 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.

The petitioner has not provided new evidence and has not provided a brief identifying an incorrect application of law or Citizenship and Immigration Services (CIS) policy. Moreover, the regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reopen or motion to reconsider be filed within 30 days of the decision it seeks to reopen or have reconsidered. The petitioner also failed to timely submit its motion.

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. The regulation at 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.

Finally, it should be noted for the record that, unless Citizenship and Immigration Services (CIS) 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. *See* 8 C.F.R. § 103.5(a)(1)(iv).

ORDER: The motion is dismissed.