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**U.S. Citizenship
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FILE: EAC 02 046 53318 Office: VERMONT SERVICE CENTER Date: JUN 01 2005

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:



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 preference visa petition was denied by the Director, Vermont Service Center. The matter came before the Administrative Appeals Office (AAO) on appeal, which was dismissed in a decision dated October 7, 2003. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is organized in the State of New Jersey as a limited liability company. It indicates that it is engaged in the import and export of fishing boats, diesel boat motors, and the import of rattan furniture and furniture made from teak. The petitioner seeks to employ the beneficiary as its director. 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 failed to establish that the beneficiary has been and would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO restated the petitioner's descriptions of the beneficiary's job duties, analyzed the petitioner's claimed hierarchical structure, and discussed the petitioner's various tax information. Based on the petitioner's submissions, the AAO concluded that the petitioner lacked a sufficient support staff to allow the beneficiary to primarily perform managerial or executive duties. The AAO also determined, beyond the director's decision, that the petitioner failed to submit sufficient documentation to support its claim of a qualifying relationship with the beneficiary's foreign employer.

On motion to reopen, counsel restates many of the arguments made previously on appeal and maintains that Citizenship and Immigration Services (CIS) affords unfavorable treatment to small business.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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.

In the instant case, a significant portion of counsel's motion is an attempt to convince CIS to review the case again based on statistical information, which indicates that small businesses are an asset to the U.S. economy. While this information may be factually correct, the success of other small businesses, even the success of the petitioner's own small business, does not establish that the beneficiary would be employed in a managerial or executive capacity. In other words, the submitted evidence does not specifically address the petitioner's eligibility under 8 C.F.R. § 204.5(j) and is irrelevant. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Accordingly, the AAO provided a thorough analysis of the job descriptions provided by the petitioner in rendering its decision.

Counsel also repeats the previously raised argument asserting that the beneficiary was employed as a function manager. However, this argument, as well as others brought forth on appeal, have already been addressed by the AAO and need not be addressed again. None of counsel's statements or arguments, even those not previously raised on appeal, cannot be considered as new facts that were unavailable at the time of the appeal. Therefore, counsel has failed to meet the requirements of a motion to reopen pursuant to the above regulation.

The regulations at 8 C.F.R. § 103.5(a)(3) state, 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.

In the instant case, counsel states that the director failed to consider the petitioner's reasonable needs as prescribed in section 101(a)(44)(C) of the Act. While counsel's reference is pertinent to the instant matter, the petitioner's reasonable needs do not override its burden of having to establish that the beneficiary would be employed in a managerial or executive capacity. In the instant case, the AAO provided a thorough, detailed discussion of the evidence of record and explained why the petitioner fell short of meeting its statutory burden. Counsel's current attempt to get the AAO to readjudicate this matter based on an incorrect interpretation of the Act falls short of meeting the requirements either of a motion to reopen or a motion to reconsider. All of the petitioner's descriptions of the beneficiary's job duties have been properly considered and need no further analysis.

Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

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. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.