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FILE: WAC 96 170 52844 Office: CALIFORNIA SERVICE CENTER Date: MAR 31 2006

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

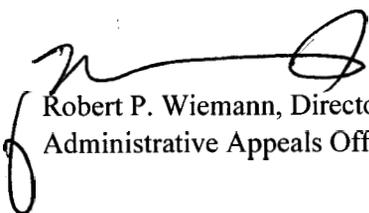
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:  
[Redacted]

SEARCHED INDEXED  
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MAR 31 2006  
CALIFORNIA SERVICE CENTER

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, California Service Center, revoked approval of the preference immigrant visa petition on January 30, 2003. The petitioner subsequently appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on October 27, 2003. The matter subsequently came before the AAO on motion to reopen and reconsider on two separate occasions. The matter is now before the AAO on a third motion to reconsider. The motion will again be dismissed.

The petitioner was incorporated in 1994 in the state of California and claims to be an affiliate of [REDACTED] located in China. The petitioner is engaged in obtaining orders for optical products. It seeks to employ the beneficiary as its vice-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 revoked approval of the visa petition based on two separate grounds of ineligibility: 1) the petitioner had not established a qualifying relationship with a foreign entity; and 2) the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity.

The petitioner appealed the revocation disputing the director's findings. The AAO dismissed the appeal, specifically addressing the evidence submitted by the petitioner and explaining why the petition could not be approved.

On first motion, counsel asserted that the additional evidence submitted with the motion was sufficient to overcome the AAO's prior decision dismissing the appeal. In the decision dismissing the motion, the AAO addressed the petitioner's arguments and explained the various shortcomings that resulted in the AAO's decision.

On second motion, the petitioner put forth similar claims, but this time added IRS Form 1120X, showing that amendments were made to the petitioner's Form 1120 corporate tax return for 2001. Nevertheless, the AAO dismissed the petitioner's second motion, pointing out that an amended tax return prepared four years after the claimed transactions raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The AAO also addressed the petitioner's reference to the case of *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004, and explained why the cited case cannot serve as guiding precedent.

In the instant matter, the petitioner's third motion before the AAO, counsel asserts that the previously submitted Form 1120X, Amended U.S. Corporation Income Tax Return constitutes new evidence sufficient to overcome the director's conclusion regarding the petitioner's failure to establish the existence of a qualifying relationship with the beneficiary's foreign employer.

It is noted, however, that the petitioner's most recent filing is titled "Motion for Reconsideration." 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 matter, the petitioner's amended tax return was not filed until January 11, 2005. Therefore, the document was clearly not a part of the petitioner's record of proceeding when the AAO first reviewed the matter on appeal on October 9, 2003. Since 8 C.F.R. § 103.5(a)(3) clearly precludes the petitioner from basing the motion to reconsider on any new evidence that was not before the AAO as of October 9, 2003, a document that did not come into existence until January 2005 is irrelevant with regard to the instant motion to reconsider.

Counsel's remaining statements address the beneficiary's employment capacity. However, the petitioner has not submitted evidence or precedent caselaw to establish that the AAO's initial decision dismissing the appeal and the subsequent decisions dismissing the petitioner's motions were erroneous. 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.

As a final note, the record shows that the petitioner has consistently filed motions subsequent to each of the AAO's decisions. However, 8 C.F.R. § 103.5(a)(1)(iv) states the following with regard to the effect of filing a motion:

Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date.

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. Motions for the reopening of immigration proceedings are disfavored for the same reasons as 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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

**ORDER:** The motion is dismissed.