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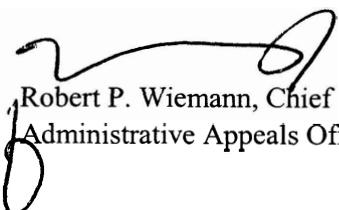
Petitioner:  
Beneficiary

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:

**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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's subsequent appeal. The matter is now before the AAO again on motion. The motion will be dismissed.

The petitioner filed this immigrant petition seeking 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). The petitioner, a Florida corporation, operates a printing and graphics business. It seeks to employ the beneficiary as its president.

The director denied the petition based on two separate grounds of ineligibility: (1) the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity; and (2) the petitioner failed to establish that the beneficiary had been employed abroad in a managerial or executive capacity.

In a decision dated December 7, 2006, the AAO dismissed the petitioner's appeal and affirmed the denial of the petition on the above-stated grounds. The AAO denied the petition on a third ground for ineligibility, determining that the petitioner had failed to establish that the petitioner had been doing business for at least one year prior to filing the immigrant petition on August 23, 2004, as required by the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D).

Counsel for the petitioner filed the instant motion on January 5, 2007. Counsel provides the following statement on Form I-290B, Notice of Appeal:

The decision was based upon failure to submit information that was not previously requested the request [sic] for evidence. Current counsel did not file the original petition, and therefore, we request the file be re-opened in order to cure.

Counsel indicated that she would send a brief and/or evidence to the AAO within 30 days. To date, no brief or additional evidence has been incorporated into the record.

The AAO notes that there is no provision in the regulations that would afford the petitioner 30 additional days in which to supplement its motion to reopen with additional documentation. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Therefore, in this case, the petitioner's motion consists solely of a Form I-290B containing a claim that the denial of the petition was improperly based on failure to provide evidence that was not previously requested.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

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."

Furthermore, 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 regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

In the instant case, the petitioner's motion does not contain any new facts and is unsupported by any pertinent precedent decisions to establish that the prior decisions were based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Counsel merely asserts that the "the decision was based upon failure to submit information that was not previously requested [in] the request for evidence." The unsupported statements of counsel on appeal or in a motion 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). Furthermore, counsel made the same claim in support of the petitioner's appeal, and the AAO's decision dated December 7, 2006, which includes a thorough discussion of the merits of counsel's assertion, found the claim to be unpersuasive and not supported by the facts in the record. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 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.

**ORDER:** The motion is dismissed.