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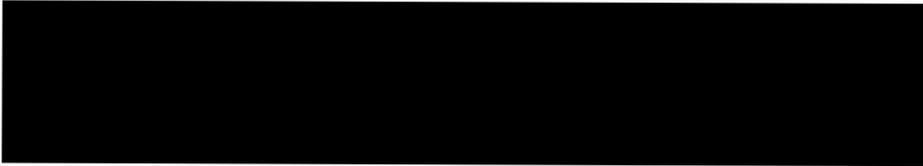
Petitioner:

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 preference visa petition was denied by the Director, California Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The AAO affirmed the director's decision in a summary dismissal of the appeal. The petitioner subsequently filed a motion seeking to reopen and reconsider the AAO summary dismissal. The AAO dismissed the petitioner's motion in a decision dated March 22, 2006. The matter is now before the AAO on second motion to reopen and reconsider. The motion will be dismissed.

The petitioner claims to be a California entity organized in March 1997. It claims to be a trading and investment company seeking to employ the beneficiary as its general manager. 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.

In a decision dated October 14, 2004, the director denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. Although the petitioner appealed the director's decision, the AAO determined that the brief internal statement provided by the petitioner was insufficient to overcome the director's findings. The AAO concluded that the petitioner failed to provide adequate evidence to establish the foreign entity's ownership.

On first motion, counsel provided three documents with translations showing that the beneficiary owns a majority interest (65.2%) in the foreign entity. In rendering its decision, the AAO determined that the petitioner failed to address the inconsistency between the petitioner's claim that the beneficiary owns 100% of the foreign entity and the more recent claim on motion that the beneficiary only owns 65.2%. Although the AAO acknowledged that both instances show the beneficiary as the majority interest holder, the AAO focused on the inconsistency itself, which gives rise to questions regarding the petitioner's credibility. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On second motion, counsel submits a brief statement attempting to reconcile the inconsistent claims regarding the beneficiary's ownership interest in the foreign entity. Counsel explains that while the beneficiary started with a 65.2% ownership interest, he acquired the remaining 34.8% share of the foreign entity in February of 1996 giving him 100% ownership of the foreign entity. However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not indicate that any corroborating evidence has been submitted in support of counsel's explanation. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the explanation provided by counsel still does not explain the original inconsistent claim that the foreign entity and not the beneficiary owns 100% of the petitioner.

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.

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 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.

In the AAO decision dated March 22, 2006, which served as the response to the petitioner's first motion, the AAO properly states that none of the evidence provided by counsel on motion can be deemed "new," as it was previously available and could have been provided on appeal. As such, the AAO concluded that the petitioner failed to meet the regulatory requirements of a motion to reopen.

With regard to the motion to reconsider, the AAO properly found that the petitioner failed to submit argument or pertinent precedent decisions establishing that the prior decision was based on an incorrect application of law or Service policy or that the decision was incorrect based on the evidence of record at the time of the initial decision. Similarly, in the present case, counsel has failed to provide the necessary documentation to meet the regulatory requirements for a motion to reconsider.

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.