



U.S. Citizenship  
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FILE: [REDACTED]  
SRC 05 262 50243

Office: TEXAS SERVICE CENTER

Date: JUN 07 2007

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office subsequently dismissed the petitioner's 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 is a Texas corporation involved in the operation of retail stores. It seeks to employ the beneficiary as its president. The director denied the petition based on three separate grounds of ineligibility: (1) the petitioner failed to establish its ownership and control and, therefore failed to establish that it has a qualifying relationship with the beneficiary's foreign employer; (2) the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity; and, (3) the petitioner failed to provide sufficient evidence to establish that the beneficiary's foreign employer continues to do business.

In a decision dated October 4, 2006, the AAO dismissed the petitioner's appeal and affirmed the denial of the petition on the grounds that the petitioner had failed to establish: (1) that the petitioner has a qualifying relationship with the beneficiary's foreign employer; and (2) that the beneficiary would be employed in the United States in a managerial or executive capacity. While the AAO found sufficient evidence to establish that the beneficiary's foreign employer continues to do business, the AAO concluded that the petitioner had not established that the beneficiary was employed in a qualifying managerial or executive capacity with the foreign entity, and denied the petition on this additional ground of ineligibility.

Counsel for the petitioner filed the instant motion on November 3, 2006. Counsel provided the following statement on Form I-290B, Notice of Appeal: "Legal and Factual errors will be discussed in the brief to follow shortly." Counsel indicated that he would send a brief and/or evidence to the AAO within 30 days. Counsel submitted a brief to the AAO on December 1, 2006.

The AAO notes that the petitioner was not afforded 30 additional days in which to supplement its motion to reopen and reconsider 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 of "factual and legal errors" from counsel and no supporting brief or evidence. The brief and evidence submitted by counsel on December 1, 2006, more than 30 days subsequent to the AAO's decision, need not and will not be considered.

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, as filed on November 3, 2006, 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 AAO's decision contained "legal and factual errors." 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). 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. 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.

**ORDER:** The motion is dismissed.