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FILE:

SRC 05 014 51210

Office: TEXAS SERVICE CENTER

Date:

OCT 10 2007

IN RE:

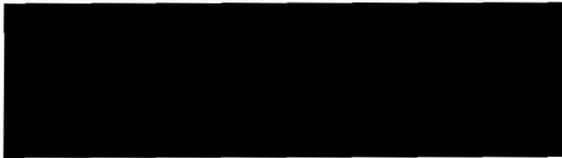
Petitioner:

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, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was dismissed. The petitioner has now filed a second Form I-1290B attempting to appeal the AAO's prior adverse decision. The AAO notes, however, that the petitioner cannot file an appeal with the AAO in order to appeal the AAO's prior decision. It appears, therefore, that the petitioner intended to file a motion to reopen and/or reconsider. The motion will be dismissed.

The petitioner is a Texas corporation engaged in the business of retail trade and investments. It 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 denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. However, the AAO affirmed the director's decision, concluding that the petitioner failed to provide a sufficient job description and supporting evidence to establish that the beneficiary would primarily perform duties within a managerial or executive capacity. In addition to the director's ground for denial, the AAO determined that the petitioner failed to establish that the beneficiary's employment with the foreign entity was within a qualifying managerial or executive capacity.

On motion, counsel states, "Errors of facts and law will be discussed in the brief to follow shortly." At the time of the AAO's initial review of this matter, a brief had not been received. Furthermore, the regulation pertaining to the submission of a motion does not allow for additional time in which to provide a brief in support of a motion. Motions are required to be filed with the brief, if any. *See* 8 C.F.R. § 103.5(a)(1)(iii); *see generally* 8 C.F.R. § 103.5(a).

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 present matter, no new facts or supporting documentary evidence have been submitted.

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.

While counsel suggests that there were errors of law and fact, he does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. 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 proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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.