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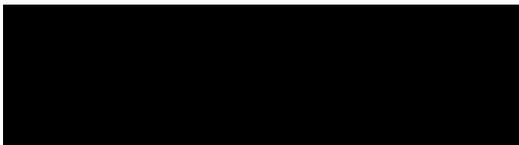
Petitioner:

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, Vermont Service Center, denied the employment-based visa petition. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). The AAO affirmed the director's findings and dismissed the appeal in a decision dated July 10, 2006. The petitioner subsequently filed a motion to reconsider, which the AAO granted, but ultimately affirmed the prior decisions of the director and the AAO. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner filed the instant petition to classify the beneficiary as a multinational manager or executive 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 corporation organized under the laws of the State of New Jersey that is operating as a real estate development, interior design, and construction management company. The petitioner seeks to employ the beneficiary as its project manager.

The director denied the petition concluding that the petitioner had failed to demonstrate that the beneficiary had been employed by the foreign entity or would be employed by the United States entity in a primarily managerial or executive capacity. In a July 10, 2006 decision, the AAO affirmed the director's findings and added another ground for ineligibility, concluding that the petitioner had not established that the United States company had been doing business for at least one year prior to the filing of the instant petition.

In the decision dated April 10, 2007, the AAO granted the petitioner's motion and properly considered evidence addressing the additional ground of ineligibility cited in the AAO's prior decision. The AAO subsequently withdrew the additional ground pursuant to a determination that the petitioner had provided sufficient evidence to overcome it. Nevertheless, after thorough consideration of the evidence and information provided on motion, the AAO affirmed the remaining adverse findings with regard to the beneficiary's employment capacity.

In support of the petitioner's most recent motion, i.e., the motion to reopen, counsel submits another brief challenging the propriety of the AAO's determination with regard to the prior motion. However, counsel's arguments are not persuasive and fail to meet the requirements of a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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.

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

First, counsel refers to a statement incorporated into the AAO's earlier decision dismissing the appeal. Specifically, counsel quotes the following: "To clarify, the petitioner must provide a list of the actual duties the beneficiary performs in his effort to carry out his overall responsibilities." On the basis of the AAO's statement, counsel asserts that the AAO improperly declined to consider the supplemental job description provided in the

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

subsequent motion. Counsel further states that the AAO's consideration of new evidence submitted on motion with regard to the issue of doing business is inconsistent with the decision not to consider additional information regarding the issue of the beneficiary's employment capacity. This argument, however, is without merit. To clarify, the adverse finding regarding the issue of the petitioner's doing business for the requisite one-year period was first made by the AAO in its decision dismissing the appeal. While the director's request for additional evidence (RFE) generally instructed the petitioner to provide evidence establishing that it and its foreign counterpart continue to do business, the adverse finding regarding the petitioner's failure to meet the specific requirements of 8 C.F.R. § 204.5(j)(3)(i)(D) was first issued in the AAO's appellate decision. Therefore, in order to give the petitioner an opportunity to address and possibly overcome this adverse finding, the AAO properly considered the evidence submitted on motion with regard to the additional ground.

To the contrary, the issue of the beneficiary's job duties is not one that was raised for the first time in the AAO's decision. Rather, the issue was first raised by the director in the RFE and subsequently served as a basis for the director's denial of the petitioner's Form I-140. The fact that the RFE instructed the petitioner to provide further information regarding the beneficiary's foreign and proposed job duties was a sufficient indication that the information previously provided was inadequate. In the denial of the petition, the director more explicitly stated that the petitioner failed to establish that the beneficiary's job duties, either abroad or with the petitioning entity, are primarily within a qualifying managerial or executive capacity. Thus, as properly pointed out by the AAO in response to the petitioner's first motion, the petitioner was properly put on notice of the fact that the overly broad job descriptions previously submitted failed to provide the necessary level of detail conveying an understanding of what actual job duties the beneficiary carried out abroad and the job duties he would be expected to carry for the petitioning entity. As such, the AAO was correct in declining to consider evidence on this issue when Citizenship and Immigration Services (CIS) had clearly provided the petitioner with sufficient opportunity to present such information either in response to the RFE or on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Additionally, a more detailed job description does not fit the above definition of "new" and, therefore, does not meet the requirements of a motion to reopen.

Next, with regard to counsel's repeated reference to the description of the project manager position provided in the Department of Labor's *Occupational Outlook Handbook* (OOH), the AAO previously explained that reliance on the general descriptions found in the OOH was improper, as 8 C.F.R. § 204.5(j)(5) requires a detailed description of job duties. Additionally, counsel's discussion of decisions made by the AAO in matters of H-1 nonimmigrants is irrelevant in the present matter, where the petitioner is seeking to classify the beneficiary in an immigrant category whose statutory requirements are entirely different from those of the nonimmigrant visa category referenced by counsel.

Lastly, while counsel provides a copy of an interoffice memorandum, which was not available at the time of the petitioner's first motion and can therefore be deemed as new evidence, this document does not establish that either the director or the AAO erred in their respective prior decisions. Specifically, the memorandum merely encourages CIS to explain a denial of an immigrant petition in the case of an alien whose prior petition in an analogous nonimmigrant visa category had been approved. *See* Interoffice Memorandum from Michael Aytes, Acting Associate Director, Domestic Operations, *AFM Update: Chapter 22: Employment-based Petitions* (September 12, 2006). On that note, counsel is asked to reference pages six and seven of the AAO's decision dated April 10, 2007, in which the AAO provides a thorough explanation.

As stated above, counsel's submissions do not meet the requirements of a motion to reopen as specified in 8 C.F.R. § 103.5(a)(2). 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.