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U.S. Citizenship  
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FILE:

[REDACTED]  
EAC 04 267 52398

Office: VERMONT SERVICE CENTER

Date: JUL 09 2008

IN RE:

Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

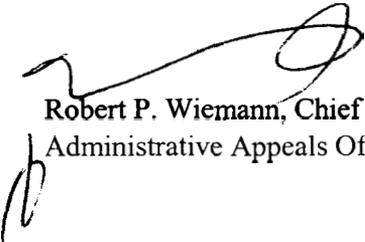
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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, Vermont Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The matter was initially remanded back to the director. After the director issued a new decision denying the petition, the appeal was dismissed and a motion to reconsider was subsequently filed. The AAO granted the motion, but affirmed its prior decision. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a New York corporation engaged in repairing, remodeling, mending, and cleaning carpets. It seeks 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. The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the United States entity in a managerial or executive capacity.

The petitioner appealed the second denial, disputing the director's findings. The AAO dismissed the appeal, affirming the director's decision.

On motion to reconsider, the petitioner challenged the AAO's review of the record of proceeding, asserting that the AAO's interpretation of the beneficiary's job duties was erroneous. After thoroughly reexamining the relevant information as it pertains to the beneficiary's job duties, the AAO concluded that its prior findings were accurate and affirmed its decision dismissing the appeal. The AAO quoted various portions of counsel's supporting brief and addressed each key point, explaining how the petitioner failed to overcome the AAO's prior adverse findings regarding the beneficiary's eligibility as function manager. The AAO focused on the deficient job descriptions provided by the petitioner, citing precedent case law that requires the petitioner to delineate the beneficiary's specific daily job duties.

In light of the AAO's findings, the petitioner has now filed a motion to reopen, supported by a brief in which counsel supplements the job description previously provided by 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.

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.<sup>1</sup> The additional information provided by counsel in her brief does not fit this definition. In fact, the petitioner had been advised on numerous occasions, both by the director and by the AAO, that a detailed job description is a key element in establishing the petitioner's eligibility to classify the beneficiary as a multinational manager or executive. Thus, the petitioner had ample opportunity to supplement the record with the necessary information either on appeal or even earlier, in response to the director's request for evidence. Counsel cannot present the supplemental information as a "new" fact that was previously unavailable in hopes of meeting the criteria for a motion to reopen.

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<sup>1</sup> 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).

Therefore, the AAO will dismiss the petitioner's motion to reopen in accordance with 8 C.F.R. § 103.5(a)(4), which states that, 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 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.