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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 02 2008  
WAC 05 151 50865

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)

IN 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, California Service Center, on May 4, 2006. On June 5, 2006, the petitioner appealed the decision to the Administrative Appeals Office (AAO), and, on December 12, 2006, the AAO summarily dismissed the appeal. On January 24, 2007, a motion to reopen and reconsider the AAO's decision was filed with the California Service Center. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

The petitioner, an Arizona corporation, endeavored to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Act as a multinational executive or manager. The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary will be employed in a primarily managerial or executive capacity; or (2) that the petitioner and the foreign employer are qualifying organizations.

As indicated above, the AAO summarily dismissed the subsequently filed appeal of the director's decision on December 12, 2006, and a motion to reopen the AAO's decision was filed on January 24, 2007.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states in pertinent part that:

Any motion to reconsider an action by [Citizenship and Immigration Services (CIS)] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In this matter, the instant motion was filed with the California Service Center on January 24, 2007, or 43 days after the decision of the AAO. As the record is devoid of evidence establishing that the petitioner's failure to file the motion with the proper fee in a timely manner was reasonable and beyond its control, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).<sup>1</sup>

In addition, the motion shall be dismissed for failing to meet three other applicable requirements. The regulations at 8 C.F.R. §§ 103.5(a)(1)(iii), (a)(2), and (a)(3) list the filing requirements for motions to reopen and reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." Section 103.5(a)(2) requires motions to reopen to "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Section 103.5(a)(3) requires

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<sup>1</sup>The record indicates that the petitioner attempted to file the instant motion without the proper fee on January 16, 2007. However, motions rejected for being filed without the proper fee do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(i); *see also* 8 C.F.R. § 103.5(a)(1)(iii)(B). Accordingly, the receipt date for the instant motion is January 24, 2007, the day it was received by the California Service Center with the proper fee.

motions to reconsider to 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."

In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for these reasons.

Furthermore, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. §§ 103.5(a)(2) and (a)(3). Counsel asserts in the motion that previous counsel failed to submit a brief and that this caused the AAO's summary dismissal of the underlying appeal. Counsel also asserts that he "is prepared to file an appeal brief within 30 days." However, not only is the record devoid of evidence of current counsel ever submitting a brief, the applicable requirements for motions mandate that any new evidence or legal arguments be submitted with the motion. *Id.* The regulations do not permit the submission of briefs or additional evidence subsequent to the filing of a motion. Therefore, the motion must also be dismissed for failing to meet these applicable requirements. 8 C.F.R. § 103.5(a)(4).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:**                      The motion is dismissed.