U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: EAC 00 170 51281 Office: VERMONT SERVICE CENTER Date: JUL 28 2004

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based visa petition. The petitioner filed a motion to reconsider the director's decision on April 28, 2001. The petitioner also submitted an appeal that was filed May 3, 2001. The Administrative Appeals Office (AAO) dismissed the appeal on January 30, 2003. The matter is now before the AAO as it issued the last decision in this matter. The motion will also be dismissed.

The petitioner is a corporation organized in 1995. It claims to provide management and consulting services. It seeks to employ the beneficiary as its president and chief technical officer. 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 determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity for the United States entity. The petitioner submitted Form I-290B, Notice of Appeal on May 3, 2001. Counsel for the petitioner noted on the Form I-290B that a separate brief and/or evidence would be submitted with the form. Appended to the Form I-290B was a brief accompanied by 21 exhibits. The AAO affirmed the director's decision in its decision dated January 30, 2003.

Counsel for the petitioner also submitted a "Motion to Reopen and Reconsider a Prior Determination Made in Connection with a Petition for an I-140 Petition for an Alien Worker." This document is date-stamped received by the Vermont Service Center on May 2, 2001, one day prior to the receipt of the Form I-290B, Notice of Appeal. The brief in support of the motion to reopen and reconsider is an exact copy of the appeal submitted May 3, 2001 and is accompanied by the same 21 exhibits.

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."

The regulation at 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.

Counsel has not submitted any new evidence and has not stated any reasons for reconsideration of the AAO decision in this matter. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states "[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.

Finally, it should be noted for the record that, unless Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. *See* 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, that burden has not been met.

ORDER: The motion is dismissed.