**U.S. Department of Homeland Security**
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 25 2004

IN RE: Petitioner: [redacted]
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:

[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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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**DISCUSSION**: The director denied the employment-based preference visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed. The petition will be denied.

The petitioner is a Texas corporation that seeks to employ the beneficiary as its general manager. The petitioner, therefore, endeavors to classify him as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the proffered position is not in an executive or managerial capacity. On appeal, counsel submitted additional evidence, but the AAO concurred with the director that the beneficiary's job would not be primarily managerial or executive. The AAO also noted beyond the decision of the director that no qualifying relationship existed between the petitioner and the alleged foreign entity.

On motion, the petitioner submits additional evidence.[1] The petitioner submits one letter each from its two general managers. Each individual states that the beneficiary is vital to the petitioner's business operations. The petitioner claims that the beneficiary supervises other managers and does not perform any day-to-day functions for the business because he manages the petitioner's business operations. Although the petitioner had indicated that it was submitting a letter from a business partner, no such letter was attached to the motion. In addition, the petitioner failed to respond to the AAO's conclusions regarding the lack of a qualifying relationship between the petitioner and the foreign entity.

The petitioner's submission of additional evidence does not satisfy the requirements of a motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Here, no evidence in the motion contains new facts that are material. The letters from the petitioner's general managers fail to address specifically the AAO's reasons for dismissing the appeal. Instead, both general managers focus their comments on the benefits that the petitioner's continued operations would have on the relationship between the United States and China. Additionally, the petitioner and the two general managers all fail to address the AAO's findings regarding the relationship between the petitioner and the alleged foreign entity. As the additional evidence fails to contain new material facts, the evidence submitted is not new for the purpose of a motion to reopen.

The evidence also fails to satisfy the requirements of a motion to reconsider. A motion to reconsider must: (1) 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 Citizenship and Immigration Services (CIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The general managers and the petitioner did not support the assertions by any pertinent precedent decisions, or establish that the director misinterpreted the evidence. All

[1] The AAO notes that an attorney, Ping C. Shen, submitted a statement along with the petitioner's motion. However, Mr. Shen failed to submit a Form G-28, Notice of Entrance of Appearance as Attorney or Representative, authorizing him to represent the petitioner. Accordingly, the AAO does not recognize Mr. Shen as the attorney of record in this proceeding. 8 C.F.R. § 103.2(a)(3).

parties also failed to address the AAO's discussion of the evidence regarding the relationship between the petitioner and the alleged foreign entity.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The previous decision of the Administrative Appeals Office, dated August 26, 2002, is affirmed. The petition is denied.