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

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

B4

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 04 2006

SRC 02 068 50468

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The petitioner submitted an appeal to the Administrative Appeals Office (AAO). The AAO found that the petitioner had overcome the director's determination that the petitioner had ceased doing business but affirmed the director's decision on the issue of the beneficiary's managerial or executive capacity for the petitioner and on the issue of the petitioner's ability to pay the beneficiary the proffered wage. The matter is now before the AAO on a motion to reopen and reconsider the previous decision. The motion will be dismissed.

The petitioner is a corporation organized in the State of Texas in February 1995. It sells and distributes dairy products. It seeks to employ the beneficiary as its president. 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.

On motion, counsel for the petitioner re-states the beneficiary's duties and asserts that the beneficiary duties and responsibilities have always been managerial, as well as executive in nature. Counsel points out that the beneficiary has authority to enter into legal agreements and that without the beneficiary's presence, the petitioner will be left without any operational direction. Counsel contends that the AAO erred in stating that the record contained an inconsistency between the petitioner's organizational chart and the Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, issued to the petitioner's employees in 2001. Counsel argues that the AAO erred when determining that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage and lists the beneficiary's annual salary for the years 2001, 2002, and 2003, although the annual salaries in each of the years did not equal the petitioner's proffered salary.

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." 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. Furthermore, the regulation at 8 C.F.R. § 103.5(a)(2) 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 [Citizenship and Immigration Service (CIS)] 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.

The AAO observes that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *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. In this matter neither counsel nor the petitioner has submitted new evidence on motion nor are counsel's assertions supported by pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law or policy. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any

evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel has not submitted evidence or argument sufficient to require the reopening or reconsideration of this matter. Accordingly, the motion will be dismissed.

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. 8 C.F.R. § 103.5(a)(4) states that "[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.

ORDER: The motion is dismissed.