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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] OFFICE: NEBRASKA SERVICE CENTER Date: JUL 0 8 2010

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO), where the appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a California corporation claiming to be engaged in the import and distribution of household products and building materials. The petitioner seeks to employ the beneficiary as its president and 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 based on the conclusion that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal concluding that the petitioner failed to establish that the petitioner was capable of relieving the beneficiary from having to primarily perform non-qualifying tasks and that the beneficiary therefore would not be employed in a primarily managerial or executive capacity. The AAO also noted, beyond the decision of the director, that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity per 8 C.F.R. § 204.5(j)(3)(i)(B) or that the U.S. entity had been doing business for one year prior to filing the petition per 8 C.F.R. § 204.5(j)(3)(i)(D).

On motion, counsel addresses a number of the AAO's adverse findings and asks the AAO to consider the petitioner's newly revised organizational chart and proposed job description as well as the description of the beneficiary's foreign employment. However, in view of the regulatory requirements of a motion to reopen and a motion to reconsider, the AAO declines to review these documents, as they do not meet the requirements for either motion.

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.[1]

In the instant matter, the director's RFE was clear in requesting the petitioner to provide a detailed description of the proposed employment, specifically listing each of the beneficiary's proposed daily tasks accompanied by the percentage of time the beneficiary would allocate to each task. It is further noted that 8 C.F.R. § 204.5(j)(3)(i) lists the initial evidence that the petitioner is required to submit in support of the Form I-140. Such initial evidence includes documentation establishing that the beneficiary was employed abroad in a qualifying managerial or executive capacity as well as documentation establishing that the petitioner was

[1] 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).

doing business for one year prior to filing the instant petition.[2] A motion is not meant to allow the petitioner an additional opportunity to correct deficiencies that it previously failed to correct or to provide information that it should have previously provided. Rather, as indicated above, the purpose of a motion to reopen is to provide the petitioner an opportunity to supplement the record with evidence that was previously unavailable. An organizational chart, whose purpose is to depict the petitioner's hierarchy at the time of filing, and the supplemental job descriptions cannot be deemed as documents that were previously unavailable and therefore do not meet the requirements of a motion to reopen.

With regard to the motion to reconsider, the regulations at 8 C.F.R. § 103.5(a)(3) state, 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.

In the present matter, the brief in support of the motion focuses primarily on counsel's assertion that the AAO erred in its interpretation of the submitted supporting evidence. This assertion however, is without merit. First, given that precedent case law requires that eligibility be established at the time of filing,[3] the AAO was reasonable in its consideration of the submitted 2007 payroll documents, as the petition was filed in 2007. While counsel claims that the 2007 checks were computer generated and for that reason lacked payor signatures and check numbers, 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).

Second, while counsel asserts that the petitioner's IRS Forms W-2 and W-3 should have been considered, there is no evidence to indicate that any relevant documentation was overlooked. Rather, counsel's assumption that such documentation was not considered appears to be based on the fact that these documents were not specifically addressed in the AAO's decision. It is noted, however, that the AAO is under no obligation to address every item submitted by the petitioner. It is well within the AAO's discretion to limit its discussion to those items it deems to be most relevant to the matter at hand. Unlike pay stubs and paychecks, which serve as contemporaneous proof of wages paid during specific isolated time periods, the IRS Forms W-2 and W-3 do not establish precisely whom the petitioner employed *at the time of filing*. Moreover, such IRS forms can be internally generated by a company and may not necessarily be an accurate reflection of information that was filed with the IRS. As such, the probative value of these documents is often limited. Thus, while these documents were, as all other submissions, reviewed in the process of determining whether or not the petitioner established eligibility, the AAO was under no obligation to list the IRS forms or to discuss whether or how such documents weighed in on the issue of the petitioner's eligibility.

In summary, counsel's challenges fail to assert that the AAO's decision was based on an incorrect application of law or Service policy; nor does counsel cite to any pertinent precedent decisions that would indicate such

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[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

[3] *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

to be the case. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). As indicated above, 8 C.F.R. § 103.5(a)(4) requires the dismissal of any motion which does not meet applicable requirements. In light of the fact that 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 this reason.

As a final note, the proper filing of a motion to reopen and/or reconsider 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.