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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B4.

DATE

AUG 15 2012

OFFICE: TEXAS SERVICE CENTER



IN RE:

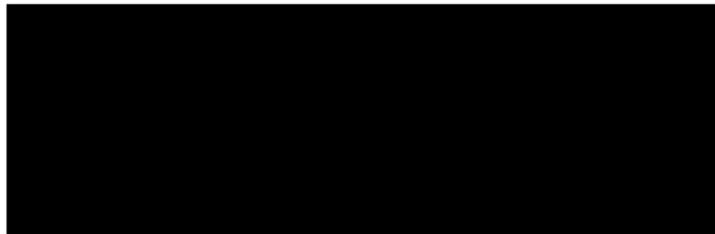
Petitioner:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office (AAO) on a motion to reconsider and a motion to reopen. The motion will be rejected as improperly filed.

The record indicates that the Form I-1290B was submitted on February 14, 2011. Counsel indicated that it was a motion to reopen and a motion to reconsider. On March 8, 2011, the Texas Service Center sent a notice to the petitioner and counsel stating that a properly executed Form G-28 was not submitted, and requested that a properly executed G-28 be submitted to the AAO. The letter also informed the petitioner and counsel, that failure to submit a properly executed Form G-28 may result in the motion being considered improperly filed. On March 22, 2011, counsel submitted a new Form G-28 to AAO; however, the new Form G-28 is still not properly executed as once again it was not signed by the petitioner. In both Forms G-28 filed with the motion, the petitioner did not sign the form as required by the regulations.

The regulation at 8 C.F.R. § 292.4(a) states that an appearance must be filed on the appropriate form by the attorney or accredited representative appearing in each case. The regulation also states that the "form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS." In addition, the regulation states that a new form must be filed with an appeal with the AAO. As the motion was improperly filed, the motion must be rejected.

In addition, even if the Form G-28 was properly executed, counsel's assertions do not satisfy the requirements of either a motion to reopen or a motion to reconsider.

The regulations 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.¹

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered *new* under 8 C.F.R. 103.5(a)(2). The evidence submitted was previously available and could have been discovered or presented in the previous proceeding.

In addition, the motion does not satisfy the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

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).

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.

On motion, counsel does not submit any document that would meet the requirements of a motion to reconsider. A review of the record and the adverse decision indicates that the director and the AAO properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the AAO dismissed the appeal. The petitioner does not establish that the AAO utilized an incorrect application of law or Service policy. Instead, the petitioner states on the Form I-1290B that "we have provided additional evidence to prove that the beneficiary is employed in a managerial and/or executive position. The motion brief re-submits the duties filed previously and resubmits the evidence provided with the petition and the previous appeal. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulation. Accordingly, the petitioner's claim is without merit.

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. With the current motion, the movant has not met that burden.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

ORDER: The motion is rejected.