

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



By

DATE: **DEC 24 2012**

OFFICE: TEXAS SERVICE CENTER

FILE:

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas 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 reconsider. The motion will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary as manager of its retail operation. 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 failed to establish that the beneficiary meets the foreign employment provision, which requires the petitioner to establish that the beneficiary was employed abroad with a qualifying employer prior to his U.S. entry as a nonimmigrant. The director acknowledged that the beneficiary's foreign employer and his prior U.S. employer have a qualifying relationship, but determined that the same is not true of the current petitioning entity and the beneficiary's former employer abroad.

On appeal, the petitioner disputed the director's decision, claiming that the petitioner is affiliated with a foreign entity. The petitioner asserted that the director's decision was unreasonable and contrary to congressional intent.

The AAO found the petitioner's assertions on appeal to be contradictory to statutory and regulatory provisions. The AAO referred to the filing requirements described at 8 C.F.R. § 204.5(j)(3)(i), which indicate that the beneficiary's employment with the petitioning U.S. entity must be a continuation of his or her employment with the entity abroad and that the foreign employer and the petitioning U.S. employer must have a qualifying relationship at the time the Form I-140 is filed. The AAO assessed the facts that were presented in light of the statutory and regulatory requirements and concluded that the petitioner neither claimed nor provided evidence to establish that it had a qualifying relationship with any of the entities that employed the beneficiary abroad, thus rendering the petitioner ineligible to classify the beneficiary as a multinational manager or executive. The petitioner has filed a motion to reconsider, seeking to establish that the AAO's decision was made in error.

With regard to the requirements for a motion to reconsider, 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.

The petitioner's current motion to reconsider is based on the same erroneous assertions that the petitioner previously made on appeal—that [REDACTED] the beneficiary's prior U.S. employer, which filed an L-1 nonimmigrant petition on the beneficiary's behalf, had a qualifying relationship with Eurodata, the beneficiary's foreign employer. Although the petitioner contends that it "provided sufficient countervailing evidence in support of Form I-140," such evidence did not and does not establish that the petitioner, Alaska, Inc., shares common ownership and control with the foreign entity where the beneficiary had been employed prior to his entry to the United States. Rather, the petitioner admits that the beneficiary did not enter the

United States to be employed by the petitioner and erroneously focuses on the petitioner's claimed "qualifying relationship with other entities abroad." The petitioner ignores the director's and the AAO's respective findings, which emphasized the lack of a qualifying relationship between the petitioner and the beneficiary's foreign employer. Whether or not the petitioner shares common ownership and control with foreign entities that did not employ the beneficiary is irrelevant and does not establish the existence of a qualifying relationship—a term that has been specifically defined within the immigration context of section 203(b) of the Act.

The petitioner does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the appeal. 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.

The 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.