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

(b)(6)

[redacted]

DATE: JUN 2 9 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

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:

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, Nebraska Service Center. The petitioner filed an appeal seeking review by the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The petitioner subsequently submitted a motion to reopen to the AAO, which was dismissed. Thereafter, the petitioner submitted a second motion to the AAO, which was also dismissed. The matter is again before the AAO on a third motion to reopen and motion to reconsider. The joint motion will be dismissed.

The petitioner is a Florida corporation that offers language-based education programs. It seeks to employ the beneficiary as its language director/owner. 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.

In a decision dated November 8, 2007, the director denied the petition based on two grounds of statutory ineligibility, finding that: (1) the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and (2) the petitioner failed to establish that it has a qualifying relationship with the foreign entity.

The petitioner appealed the director's decision. The AAO dismissed the appeal, noting that in responding to the director's RFE, the petitioner failed to provide crucial documents that are necessary to gauge the availability of a support staff and whether the beneficiary would be relieved from having to primarily perform the non-qualifying, daily operational tasks of the business. The AAO concluded that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The AAO also found that the petitioner failed to submit sufficient evidence to demonstrate that the petitioner and the beneficiary's employer abroad have the required common ownership and control. Beyond the decision of the director, the AAO also found that, insofar as the regulation at 8 C.F.R. § 204.5(j)(5) required the petitioner to establish that the beneficiary will be "employed" as an "employee of the United States operation, the petitioner has failed to do so. *See, e.g., Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992); *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 449-450 (2003). Finally, the AAO found that the petitioner failed to show 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 petitioner is a "multinational" entity, as defined at 8 C.F.R. § 204.5(j)(2).

Thereafter, the petitioner submitted a motion to reopen, which the AAO dismissed. The petitioner subsequently submitted a motion to reopen and a motion to reconsider, which the AAO also dismissed. The matter is once again before the AAO. As indicated by the check mark at box F of Part 2 of the Form I-290B, the petitioner elected to file a combined motion to reopen and motion to reconsider. On motion, the petitioner submits a brief and additional evidence.[1] The AAO reviewed

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[1] The petitioner requests oral argument before the AAO. The petitioner states, "As an English Language Professor I can express my appeal in a better and natural form of communication to testify for obtaining the goals." For such requests, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the

the record of proceeding in its entirety before issuing its decision.

First, turning to the motion to reopen, 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.[2] The new facts submitted on motion must be material and previously unavailable, and could not have been discovered earlier in the proceeding. *Cf.* 8 C.F.R. § 1003.23(b)(3).

In this matter, the motion consists of the Form I-290B along with the petitioner's brief and the following documents: (1) a printout from a blog mentioning the petitioner's services, dated July 27, 2009; (2) an Annual Minutes Form for the petitioner; and (3) an undated local business tax renewal notice.

The AAO reviewed the information presented but notes that the petitioner has not submitted factual information or changed factual circumstances that were not considered and could not have been presented in the initial proceeding. Here, the evidence submitted on motion does not contain material, new facts that were previously unavailable. As the documentation submitted on motion was previously available or could have been obtained prior to the motion, and as none of it is "new" or supports material new facts, there is no basis for the AAO to reopen the proceeding. Thus, the documentation fails to meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen will be dismissed.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as 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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

The AAO will now consider the petitioner's motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect

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petitioner did not identify any unique factors or issues of law to be resolved. The written record of proceeding fully represents the facts and issues in this matter, and there is no explanation why any facts or issues in this matter, whether novel or not, have not and cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.

[2] 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 NEW COLLEGE DICTIONARY 753 (2008)(emphasis in original).

based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. § 103.5(a)(3) (requirements for a motion to reconsider) and the instructions for motions to reconsider at Part 3 of the Form I-290B.[3]

In the instant case, the petitioner claims that it has provided sufficient evidence to establish eligibility for the benefit sought. The AAO notes that the petitioner previously made this assertion in the prior motion. Although the petitioner states its disagreement with the prior decision, the petitioner does not cite a statutory or regulatory authority, case law, or precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy. The petitioner has not established that the decision was incorrect based on the evidence of record at the time of the decision. In short, the petitioner has not submitted any evidence that would meet the requirements of a motion to reconsider.

Furthermore, a review of the record and the prior decisions 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 director denied the petition; however, both the director and the AAO have provided the petitioner with detailed statements regarding the requirements to establish eligibility for the benefit sought. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the applicable statutory and regulatory provisions. Accordingly, the petitioner's claim is without merit. Thus, the motion to reconsider must be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirement as stated at 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

It should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a 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.

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[3] The provision at 8 C.F.R. § 103.5(a)(3) states that 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." This regulation is supplemented by the instructions on the Form I-290B, by operation of the rule at 8 C.F.R. § 103.2(a)(1). Part 3 of the Form I-290B submitted by the petitioner states: "Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions."