U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: WAC 02 279 50810 Office: CALIFORNIA SERVICE CENTER Date: SEP 14 2005

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.

Erica Haldan

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The last decision of the AAO was issued on November 5, 2004. On December 3, 2004, CIS received a one-page letter from petitioner's new counsel requesting a period of time up to and including February 1, 2005 to submit a brief. Counsel submitted a Form G-28, Notice of Entry of Appearance of Attorney or Representative, dated December 2, 2004. The Form G-28 was signed by the petitioner but not by counsel. Counsel cited the reason for the request was to have sufficient time to obtain the administrative file from previous counsel and time to prepare a brief. On December 28, 2004 counsel again requested a period of time up to and including February 1, 2005 to submit a brief. Counsel noted that it would take two to three weeks to receive evidence from the foreign entity and that counsel had been out of the office caring for an ill family member.

Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Moreover, although counsel requested additional time to submit a brief and evidence, counsel does not persuade that the petitioner's delay in obtaining evidence was reasonable and beyond the control of the petitioner. Further, the AAO fails to understand the petitioner's delay in obtaining new counsel to undertake this motion on the petitioner's behalf. As a matter of discretion, the petitioner's failure to submit evidence or a brief within the period allowed will not be excused as either reasonable or beyond the control of the petitioner.

Moreover, the AAO observes that counsel has not provided new[1] documentary evidence or pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or CIS policy. 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." The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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[1] 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.

> 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 Services] 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 this matter, counsel's letter does not cite any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy. Although counsel submits 13 exhibits, the AAO notes exhibits 1, 2, and 7 had been previously submitted and considered; exhibits 4, 5, 8, 9, and 10 were previously available but were not submitted for consideration; and exhibits 3 and 6 are repetitious of previously available and submitted documentation. Exhibits 11, 12, and 13, include a 2003 annual report, office leases for various offices, and a California Form DE-6, Employer's Quarterly Wage and Withholding Report for the quarter ending September 30, 2004. The information contained in exhibits 11, 12, and 13 does not contribute to a finding of the beneficiary's eligibility for this visa classification when the petition was filed in September 2002. Counsel does not provide new facts supported by affidavits or other documentary evidence to substantiate a motion to reopen. 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).

Accordingly, the motion must be dismissed for failing to meet applicable requirements.

ORDER: The motion is dismissed.