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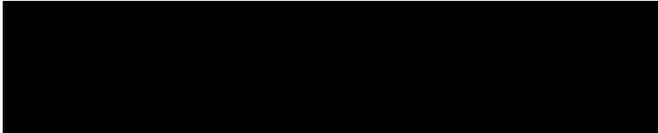
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 09 2008

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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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, 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). The appeal was ultimately dismissed. The matter then came before the AAO on motion to reopen and reconsider. While the AAO granted the petitioner's motions to reopen and reconsider, the underlying decision dismissing the appeal was affirmed. Counsel then filed a second motion to reopen and reconsider, which the AAO dismissed. The matter is now before the AAO on a third motion to reconsider, which will also be dismissed.

The petitioner is an Oregon corporation engaged in exporting commodity items to the Russian Far East. It seeks to employ the beneficiary as its vice president. 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 following grounds: 1) the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer; and 2) the beneficiary's proposed employment is not within a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. However, the AAO upheld the director's overall decision on the grounds listed above.

On motion, counsel submitted a brief addressing each of the two grounds that served as the basis for denial and subsequent dismissal of the appeal. The AAO reviewed the record in its entirety and reevaluated the prior adverse finding with regard to the petitioner's qualifying relationship with the beneficiary's foreign employer. However, with regard to the beneficiary's proposed employment with the U.S. petitioner, the AAO reaffirmed the prior finding and provided an in-depth analysis that served as the basis therefore.

On second motion, counsel submitted another brief and additional evidence addressing the remaining ground of ineligibility. With regard to the motion to reopen, the AAO determined that the petitioner failed to submit any fact that can be deemed new.<sup>1</sup> With regard to the petitioner's motion to reconsider, the AAO determined that the case law introduced by counsel did not include precedent decisions that are binding on all Citizenship and Immigration Services (CIS) employees. *See* 8 C.F.R. § 103.3(c).

On present motion, counsel urges the AAO to reconsider its prior decision with regard to the beneficiary's employment capacity, listing the various supporting documents that were previously submitted. Despite the fact that the AAO has issued several decisions explaining why the documentation previously submitted is insufficient, counsel insists that there is no more documentation available to establish the petitioner's eligibility. In yet another attempt to establish that the beneficiary's employment in the United States is executive in nature, counsel restates the statutory definition of executive capacity and discusses how the beneficiary satisfies each of the four components that make up the definition. However, with regard to a motion to reconsider, the regulations at 8 C.F.R. § 103.5(a)(3) state the following, 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 CIS policy. A motion to reconsider a decision on an application or

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<sup>1</sup> 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).

petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Thus, the purpose of a motion is different from the purpose of an appeal. While the AAO conducts a comprehensive review of the entire record on appeal, a review in the case of a motion to reconsider is strictly limited to an examination of any purported misapplication of law of CIS policy, which must be supported by precedent case law. As such, counsel's most recent recitation of the beneficiary's proposed employment does not meet the provisions of a motion to reconsider. This matter has now been reviewed by the AAO on three prior occasions, with the most recent motion being the fourth occasion for review. Any information regarding the beneficiary's proposed employment, particularly his job duties, should have been provided on appeal. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per every petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated. The petitioner cannot continue filing motions in an effort to overcome the deficiencies it had the opportunity to overcome on appeal. As with the prior motions, counsel continues to cite only unpublished decisions that are not binding on CIS employees. *See* 8 C.F.R. § 103.3(c). Accordingly, the petitioner has failed to meet the regulatory provisions for a motion to reconsider.

Therefore, the AAO will dismiss the petitioner's motion to reconsider 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.

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.