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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: DEC 09 2011

OFFICE: TEXAS SERVICE CENTER

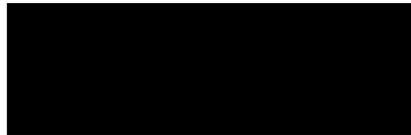


IN RE: Petitioner:
Beneficiary:



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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. The director ultimately revoked the approval of the petition. The petitioner subsequently filed a motion to reconsider the decision revoking approval. The director dismissed the petitioner's motion and the petitioner filed an appeal with the Administrative Appeals Office (AAO). The appeal was dismissed and the matter is now before the AAO on motion to reconsider. The AAO will dismiss the petitioner's motion.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its general manager. 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. In the original decision, the director determined that the petitioner failed to respond to the notice of intent to revoke (NOIR) and therefore failed to overcome the following adverse findings: 1) the beneficiary was not employed abroad in a qualifying managerial or executive capacity; 2) the foreign entity is not doing business; 3) the beneficiary will not be employed in a managerial or executive capacity; and 4) the petitioner failed to establish that it had the ability to pay the beneficiary's proffered wage from the date the Form I-140 was filed and continuing until the beneficiary obtains lawful permanent residence.

On motion, counsel argued that U.S. Citizenship and Immigration Services (USCIS) failed to serve the petitioner with a copy of the NOIR and asserted that the USCIS Tampa District Office had jurisdiction to consider the motion. Counsel further argued that failing to serve the petitioner with a NOIR was the equivalent to revoking the approval of the petition via automatic revocation, which does not apply to the petitioner in the present matter.

In a decision dated January 8, 2008, the director dismissed the petitioner's motion to reconsider, finding that the petitioner was properly served with a copy of the NOIR via [REDACTED] the petitioner's attorney of record. The director further noted that the petitioner filed an untimely motion with the wrong USCIS office. Lastly, in consideration of 8 C.F.R. § 103.5(a)(3), which discusses the regulatory requirements of a motion to reconsider, the director found that the petitioner failed to meet the necessary criteria and that granting the motion was therefore not warranted.

The petitioner appealed the director's decision, reasserting the argument that USCIS erroneously served copies of both notices on [REDACTED] the petitioner's prior attorney, and thus failed to properly serve the petitioner with a copy of the NOIR and final revocation notice.

In the decision dismissing the appeal, the AAO found counsel's arguments to be unpersuasive and affirmed the director's finding that the record contained no evidence that the individual whom the petitioner had previously held out as its attorney of record had withdrawn his representation or that a new attorney had been chosen to represent the petitioner. The AAO concluded that the NOIR and the final notice of revocation were both properly issued to the petitioner through its counsel of record and rejected counsel's argument that the approval of the petition was automatically revoked without notice.

In support of the petitioner's current motion, counsel seeks to have the AAO reconsider its prior decision and reverse the adverse findings.

The regulations at 8 C.F.R. § 103.5(a)(3) state, 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 USCIS 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 AAO finds that counsel's motion is unpersuasive and fails to establish that the decision dismissing the appeal was based on an incorrect application of law or USCIS policy.

Counsel first asserts that USCIS should have employed a common sense approach by assuming that the original Form G-28 that was signed by [REDACTED] applied to both the beneficiary's Form I-485 as well as the petitioner's Form I-140. However, the implication that USCIS should interpret the petitioner's intent and look beyond the documentation presented by the petitioner is unsupported by any regulation or case law.

Moreover, applying the common sense approach as suggested by counsel would further support USCIS's adverse findings rather than counsel's assertions. Given the fact that the petitioner could easily have elected new counsel, [REDACTED] simply by checking the box marked "petitioner" in the Form G-28, common sense would dictate that not marking the box for "petitioner" was an intentional act rather than an inadvertent error. Counsel cannot simply expect USCIS to make assumptions regarding the petitioner's representation when the process for choosing representation is simple and allows counsel to establish his representation of the petitioner and the beneficiary simultaneously by using the same Form G-28. There is no evidence to support counsel's assertion that the "Tampa USCIS office was well aware" of [REDACTED] representation of the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof, as such unsupported assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, the AAO notes that counsel's citation of unpublished AAO decisions will not be considered, as the provisions for a motion to reconsider require the petitioner to cite to "pertinent precedent decisions" in support of its assertions. It is noted that merely citing to precedent case law is insufficient. Rather, the "pertinent precedent decisions" must relate directly to the alleged legal error upon which the motion to reconsider is based. In other words, the precedent case law must "establish that the [AAO's] decision was based on an incorrect application of law or USCIS policy." In the present matter, while counsel cites to published case law where it was established that the petitioner must be issued an NOIR in order to be given an opportunity to address the grounds intended for the revocation, there is no evidence in the record that shows how the AAO's decision contravened a pertinent precedent decision. As determined in earlier proceedings, the NOIR was properly issued to the petitioner's attorney of record. Although it is clear that counsel seeks to further challenge the proper issuance of the NOIR, the AAO notes that the motion to reconsider is not the proper proceeding to dispute a prior finding of fact. Rather, the objective of a motion to reconsider is simply to establish whether legal error was committed by the official who issued the last decision so that official can take remedial action accordingly.

Counsel does not present any evidence that the AAO committed legal error when it issued the decision dismissing the petitioner's appeal. It appears that counsel's primary purpose in filing the instant motion to reconsider is to revisit a fact-based finding, which the petitioner had the opportunity to fully address on

appeal. Counsel does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states that a motion that does not meet applicable requirements shall be dismissed.

As a final note, the proper 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.