

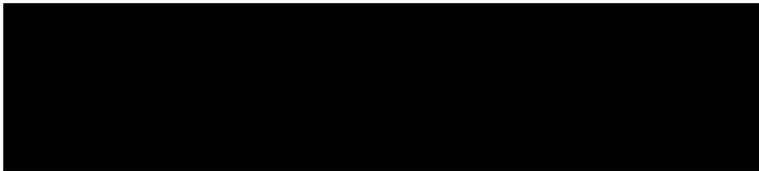
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B4

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAR 04 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 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 denied by the Director, Nebraska Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was summarily dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a New York corporation that seeks to employ the beneficiary as its 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 determination that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal, affirming the director's adverse finding with regard to the beneficiary's employment capacity in the proposed position with the U.S. entity. The AAO also found, beyond the decision of the director, that the petitioner submitted conflicting information regarding its ownership and therefore failed to establish that it has a qualifying relationship with a foreign entity.

On motion, the petitioner submits a copy of the petitioner's 2007 tax return. Although not expressly stated, the AAO will assume that the tax return was submitted for the purpose of establishing that the petitioner was a wholly-owned subsidiary of the Chinese parent entity during the year in which the Form I-140 was filed. The AAO further notes that the petitioner does not dispute the summary dismissal of the appeal on the basis of the original ground for denial, i.e., the petitioner's failure to establish that the beneficiary would be employed in the United States within a qualifying managerial or executive capacity.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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.

In the instant matter, while the petitioner's 2007 tax return clearly addresses the additional adverse finding the AAO issued in its July 28, 2009 decision, the validity and reliability of this document is questionable at best due mainly to the fact that the copy submitted was neither certified nor signed by an officer of the filing organization, i.e., the petitioner. Furthermore, the AAO notes that the 2007 tax return does not resolve the inconsistencies that were created by the petitioner's 2004, 2005, and 2006 tax returns, none of which showed the petitioner as being owned by the foreign parent entity, despite information conveyed in the petitioner's stock certificate no. 1, which showed the foreign parent entity as the sole owner of the petitioner's outstanding issued stock. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the petitioner's 2007 tax return is deficient and does not address the inconsistencies created by the earlier tax returns, the petitioner has not overcome the additional ground for denial that was cited in the AAO's prior decision.

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.

In the instant case, 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 petitioner's 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.

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.