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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

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

MAR 14 2011

IN RE: Petitioner:
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:

[REDACTED]

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, California Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO), where the appeal was dismissed. The petitioner subsequently filed a motion to reopen, which was granted, but the AAO ultimately affirmed the prior adverse decision. The AAO similarly upheld all prior adverse findings in response to the petitioner's second motion to reopen and reconsider. The matter is now before the AAO on motion to reconsider. This third motion will also be dismissed.

The petitioner is a California corporation that seeks to employ the beneficiary as its controller and vice president of administration. 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 conclusion that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings and claiming that the beneficiary would be employed in a managerial and an executive capacity. In a decision dated December 21, 2005, the AAO dismissed the appeal affirming the director's conclusion. The AAO found that the beneficiary would be performing the petitioner's non-qualifying administrative and operational tasks and that he would not be supervising managerial, professional or supervisory employees who would relieve him from having to primarily perform non-qualifying tasks. In addition to the director's findings, the AAO further concluded that the petitioner failed to establish that the beneficiary was employed abroad in a managerial or executive capacity. The AAO provided detailed discussions of the job descriptions previously given by the petitioner, explaining in detail the basis for its adverse findings.

On first motion, counsel argued that dismissing the appeal amounted to an abuse of discretion, claiming that the AAO failed to consider the beneficiary's contribution to the success of the U.S. entity. Counsel offered an additional job description for the beneficiary. The AAO found that counsel's submissions were insufficient to overcome the prior decision and ultimately affirmed the decision dismissing the appeal. In support of its conclusions, the AAO provided a comprehensive analysis of the petitioner's submissions and concluded that the petitioner failed to meet the regulatory, statutory, and case law provisions that called for a statement of the beneficiary's actual job duties. The AAO further noted that the petitioner did not dispute 1) that at the time of filing it did not employ a support staff to relieve the beneficiary from having to perform lower-level tasks associated with payments, collections, refunds, or handling refund requests and legal issues; 2) that the beneficiary would not supervise a staff of managerial, supervisory, or professional employees; and 3) that the beneficiary was not employed abroad in a qualifying managerial or executive capacity.

On second motion, counsel asserted that the beneficiary is employed in an executive capacity. In support of her assertion, counsel offered an affidavit written by the petitioner's office manager and evidence of the educational levels of the beneficiary's claimed subordinates. However, the AAO properly found that these additional documents did not meet the requirements of a motion to reopen. The AAO duly pointed out that the petitioner had been advised on numerous occasions, both by the director and by the AAO, of the various deficiencies that lead to the adverse findings and further noted that the petitioner had ample opportunity to supplement the record with the necessary information either on appeal or in response to the request for evidence. The AAO concluded that counsel's submissions did not warrant another full discussion of an issue that had already been considered in full.

Additionally, in response to counsel's contention that a prior list of five goals and policies had been ignored, the AAO found that the petitioner had been accorded the benefit of a full and comprehensive review of all the facts and issues that were deemed to be the most relevant in determining the petitioner's eligibility for the immigration benefit sought. The AAO rejected counsel's underlying argument that every piece of information offered by the petitioner must be specifically enumerated and discussed. The AAO was clear in stating that the AAO will limit its discussion to those items and facts it deems to be the most relevant in addressing the grounds for ineligibility. Lastly, the AAO found that counsel failed to address the requirements for a motion to reconsider, despite the fact that a combined motion to reopen and reconsider had been filed.

In the present matter, the petitioner has filed a motion to reconsider. On behalf of the petitioner, counsel persists in her argument that the petitioner submitted evidence that was not fully considered and asserts that U.S. Citizenship and Immigration Services (USCIS) failed to comply with Chapter 22 of the Adjudicator's Field Manual (AFM).

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 present matter, despite the AAO's prior decision in which the proper requirements for a motion to reopen were addressed, counsel fails to cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal and subsequent motions. The AAO notes that the AFM is neither a legal precedent nor an applicable law. Specifically, the AFM provides internal directives and does not have the force of law. *See Romeiro de Silva v. Smith*, 773 F.2d 1021, 1024 (9th Cir.1985); *see also, Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004). Moreover, counsel provided no sound legal argument specifying exactly which evidence the AAO failed to consider and precisely how this alleged oversight is inconsistent with the instructions provided in Chapter 22 of the AFM. Therefore, once again, the petitioner's 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.