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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: **AUG 16 2012**

OFFICE: NEBRASKA SERVICE CENTER

FILE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 nonimmigrant visa petition was denied by the director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a Texas corporation that is a "retail outlet." It seeks to employ the beneficiary as its President/Director. 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.

On August 12, 2010, the AAO affirmed the director's decision concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity, and the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

Counsel submitted Form I-290B on September 13, 2010, as a motion to reopen and reconsider. On the Form I-290B, counsel states that "it was mentioned in the denial that the Petitioner had not submitted a job description for the beneficiary with the foreign company." Counsel further noted that "apparently, we had simply neglected to enclose another copy of these items with the I-140 petition."

As noted in the AAO's decision, the petitioner did not provide a job description for the beneficiary's employment abroad with the I-140 petition, but did submit this documentation in response to the director's request for evidence. The AAO's decision stated that in response to the RFE "the petitioner submitted two separate attachments, one describing the beneficiary's foreign position and the other describing the beneficiary's proposed position." The AAO provided an analysis of the job descriptions of the foreign position and the proposed position and explained how both positions do not qualify as employment in a managerial or executive capacity. Thus, counsel was incorrect in stating that the AAO denied the petition based on the fact that the petitioner did not submit a job description for the foreign employment and the proposed employment.

On motion, the petitioner submits a job description for the foreign employment and an organizational chart, and a job description for the proposed duties. The evidence submitted on motion is very similar to the evidence submitted initially with the I-140 petition and in response to the director's request for evidence.

Counsel's assertions do not satisfy the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(2) states, 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 Service 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.

On motion, counsel does not submit any document that would meet the requirements of a motion to reconsider. A review of the record and the adverse decision indicates that the director and the AAO properly applied the statute and regulations to the petitioner's case. The petitioner does not provide any evidence to establish that the AAO's decision was incorrect.

In addition, the motion does not satisfy the requirements of a motion to reopen. The regulations 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."

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.¹

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered *new* under 8 C.F.R. 103.5(a)(2). On motion, the petitioner submits a job description of the beneficiary's position with the foreign company, and an organizational chart of the foreign company, and a job description for the proffered position. The job descriptions are similar to the documentation submitted previously. In addition, counsel does not explain that this information was previously unavailable and could not have been discovered or presented in the previous proceeding. The documentation presented on motion does not overcome the concerns addressed in the director's denial and the AAO's dismissal of the appeal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On the motion Form I-290B, counsel for the petitioner contends that the "petitioning company gross almost \$3,000,000.00 in annual sales and now has 10 employees. Certainly, it needs a manager to oversee it." Counsel failed to provide any evidence to corroborate this claim. In addition, the AAO must review the petitioner's organization as it was on the date the I-140 petition was filed, in this case, on January 22, 2007. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

¹ 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).