

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

[Redacted]

By

DATE: DEC 04 2012 Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

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)

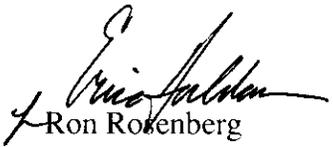
ON BEHALF OF PETITIONER:
[Redacted]

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 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,


Ron Rokenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner subsequently filed a motion to reopen with the Nebraska Service Center. The director reopened the matter and affirmed the prior decision. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO again on a combined motion to reopen and reconsider. The motion will be dismissed.

The petitioner filed this immigrant petition seeking 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). The petitioner, a Wisconsin corporation, seeks to employ the beneficiary as a cosmetic visual standard manager.

On October 27, 2009, the director denied the petition based on the determination that the petitioner failed to establish the beneficiary was employed abroad in a managerial or executive capacity. The director granted the director's subsequent motion to reopen and affirmed the denial of the petition on January 25, 2010. The petitioner subsequently filed an appeal.

In a decision dated December 9, 2011, the AAO dismissed the petitioner's appeal and affirmed the denial of the petition on the above-stated ground and two additional independent and alternate grounds. In addition to determining the petitioner failed to establish the beneficiary's employment abroad in a managerial or executive capacity, the AAO denied the petition on the second ground that the petitioner failed to establish there was a qualifying relationship between the petitioner and the beneficiary's foreign employer as required by 8 C.F.R. § 204.5(j)(3)(i)(C). The AAO also denied the petition on a third ground of ineligibility, determining the petitioner failed to establish the petitioner had been doing business for at least one year prior to filing the immigrant petition on October 23, 2008, as required by the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D).

Counsel for the petitioner filed the instant motion to reopen and reconsider on January 11, 2012. Counsel provides, in pertinent part, the following statement in an attachment to Form I-290B, Notice of Appeal or Motion, in reference to the AAO's decision:

The AAO went on further, however, to complain that in addition, there was not a sufficient demonstration of the inter-company relationship established through documents, to show the qualifying relationship for L-1 treatment. Furthermore, the decision goes on to state similarly that the petitioner had not demonstrated that it had been in business for at least one year prior to filing the I-140. While it seems to this counsel that some of those complaints appear to be about matters that would be intuitively obvious, we are requesting the opportunity to provide the additional documentation, both from the standpoint of international parent company documentation, as well as the current U.S. domestic petitioner.

Based upon the expanded ground for denial on this matter, we are requesting an additional 30 days from your receipt of this I-290B within which to supplement our motions with the appropriate documentation that will establish the validity of the qualifying relationship, the one year prior existence, and additional detail apparently deemed necessary. Similarly, we would submit within that 30 day additional time period, an additional legal memoranda [*sic*] to support the evidentiary impact of the documentation submitted, as well as the relevant standards of law applicable.

Counsel indicated he would send his legal brief and additional documentary evidence to the AAO within 30 days of filing the motion. The record indicates that neither the petitioner nor counsel has filed a brief or supplemental evidence in support of the motion as of this date.

The AAO notes that there is no provision in the regulations that would afford the petitioner 30 additional days in which to supplement its motion to reopen and reconsider with additional documentation. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Therefore, in this case, the petitioner's motion consists solely of a Form I-290B summarizing the AAO's decision to dismiss the petitioner's appeal and requesting more time to submit a brief and evidence to address the AAO's decision, including the additional grounds of denial.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The regulation 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."

Furthermore, 8 C.F.R. § 103.5(a)(3) 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

In the instant case, the petitioner's motion does not contain any new facts and is unsupported by any law, statute, or pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. Counsel's motion provides little more than a summary of the AAO decision and a request for additional time to submit a brief and additional documentation. Counsel requests this time to provide additional material because the AAO's "expanded ground for denial" went beyond the scope of the director's decision. However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spenser Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). The petitioner is not exempt from the regulatory requirements governing the filing of motions simply because the AAO determined that the petitioner was ineligible for the benefit sought based on additional adverse findings.

Notwithstanding the request for more time, no additional documentation or brief has been incorporated into the record. The AAO's decision dated December 9, 2011 included a thorough discussion of the merits of this petition and found the petitioner's claims to be unpersuasive and not supported by the facts in the record.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.