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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:

JUL 27 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 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 dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a California 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 it would employ the beneficiary 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 conclusion. In reviewing the beneficiary's job description, the AAO observed that a considerable portion of the beneficiary's time would be allocated to operational tasks and that he therefore would not allocate his time primarily to qualifying managerial- or executive-level tasks. The AAO further observed a discrepancy between claims that were made in the beneficiary's job description regarding his oversight of employees with managerial position titles, which the petitioner did not include in its organizational chart. In addressing the petitioner's staffing and organizational hierarchy, the AAO noted that the petitioner failed to comply with the director's request for the submission of IRS Form W-2s for 2007, which could have assisted in determining whom the petitioner employed at the time the Form I-140 was filed.

Additionally, the AAO went beyond the director's decision in concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity and that the petitioner provided insufficient evidence establishing that it has a qualifying relationship with the beneficiary's foreign employer.

On motion, counsel submits a statement dated December 1, 2010, previously requested W-2 statements, and evidence in support of the petitioner's qualifying relationship with the beneficiary's foreign employer. In his supporting statement, counsel points to the supplemental tax documents submitted in support of the motion and calls the AAO's attention to previously submitted quarterly wage reports and IRS Form 1099s showing wages and salaries paid to employees and contractors, respectively, in 2006. Counsel also asks the AAO to consider evidence of the petitioner's foreign ownership.

The AAO finds that the petitioner's submissions do not meet the requirements of a motion. The discussion below will address the requirements of a motion to reopen and reconsider and explain how the supporting evidence falls short of meeting the relevant regulatory provisions.

Turning first to the motion to reopen, 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. Although the AAO finds that a number of the petitioner's submissions are sufficient to establish the existence of the requisite qualifying relationship, the same is not true with regard to the two remaining adverse findings cited in the November 3, 2010 decision, where the AAO determined that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity. Neither counsel's statement nor the supporting evidence addressed the beneficiary's employment abroad. With regard to the

beneficiary's proposed employment, counsel pointed to newly submitted Form W-2s, which show whom the petitioner employed in 2007.

By not addressing the beneficiary's employment abroad, the petitioner has effectively conceded the AAO's adverse finding. With regard to the beneficiary's employment with the U.S. entity, the only new evidence the petitioner submits consists of its 2007 Form W-2 statements. However, the director previously issued a request for evidence thus putting the petitioner on notice of required evidence and allowing it a reasonable opportunity to supplement the record with the evidence before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on motion. The AAO will not accept evidence offered for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on motion.

Furthermore, with regard to previously submitted quarterly wage statements and Form 1099s for 2006, these documents are not relevant in this matter, as the petitioner must establish eligibility at the time of filing the petition. Since the petitioner filed its Form I-140 on March 30, 2007, any wages or salaries that the petitioner paid in 2006 would not address the issue of eligibility at the time of filing the petition.

Turning now to the motion to reconsider, 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.

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, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

Lastly, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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.