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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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DATE: **MAR 14 2012**

OFFICE: TEXAS 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 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 nonimmigrant visa petition was denied by the director, Texas Service Center. The Administrative Appeals Office (AAO) summarily dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the director's and the AAO's decision will be undisturbed.

The petitioner is a Florida corporation that is engaged in the retail sale of imported products, and seeks to employ the beneficiary as its Vice President/Financial Manager. 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 January 26, 2009, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On February 25, 2009, the petitioner filed Form I-290B and stated that it is filing an appeal, and a brief and/or additional evidence will be submitted to the AAO within 30 days. In a decision dated May 14, 2010, the AAO summarily dismissed the appeal and stated, "over fourteen months have passed since the filing of the appeal and there is no evidence that the petitioner supplemented the record with any additional evidence or information addressing the ground cited for denial." On June 15, 2010, counsel for the petitioner filed a Form I-290B and identified it as a Motion to Reconsider.

On motion, counsel contends that "due to the serious and ultimately fatal illness of petitioner's former attorney, the supporting brief was mistakenly mailed to the wrong office." The petitioner also submitted a declaration from the beneficiary that states the previous attorney became ill and "informed me that he would be unable to continue representing [the petitioner] and referred the matters as to which he represented [the petitioner] to the law firm [REDACTED]." The beneficiary also states that the previous attorney "became disabled and could not perfect the appeal of the denial of [the petitioner's] I-140 and I-485 applications."

In addition, the petitioner provides copies of email correspondence between the previous attorney and the petitioner. In email correspondence dated November 20, 2009, the previous attorney contacted the beneficiary to tell him that due to his illness he will close his practice and he stated that "I am transferring my immigration cases to an attorney with whom I have worked for five years. Her name is [REDACTED]." The previous attorney further stated that if the petitioner wished to transfer the file to an attorney other than [REDACTED], "please advise me and I will forward your file to that attorney."

On November 21, 2009, the petitioner responded to the previous attorney via email correspondence and stated, "about our cases whatever you suggest or advise we follow you." On November 22, 2009, the prior counsel responded in an email correspondence and stated, "You might want to consider an immigration attorney in your local area to help you because your issues are complex. I know [REDACTED] has the skills to do the job, but it will time consuming. Let me know your thoughts." The petitioner did not provide any additional correspondence showing that the petitioner decided to transfer the case either to [REDACTED] or another attorney.

On motion, counsel for the petitioner restates the procedural history of the case, listing the factual history of the beneficiary's U.S.-based employment, restating the beneficiary's duties, and paraphrasing the

relevant statutory and regulatory provisions. The AAO will not consider this brief since it is outside of the scope of the current Motion to Reconsider. The motion is to reconsider the AAO's summary dismissal of the appeal and not the underlying denial of the I-140 petition.

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. The petitioner's primary complaint is that the AAO summarily dismissed the appeal. On motion, the petitioner explains that the previous attorney became ill and could not file the supporting documentation for the Form I-290B that was filed on February 25, 2009. However, according to email correspondence provided by the petitioner between the previous attorney and the petitioner, the prior attorney informed the petitioner of his illness and the need to transfer his cases to another attorney on November 20, 2009, over nine months after the Form I-290B was filed. Thus, the petitioner's claim that the attorney's illness is the cause for the delay in submitting supplemental evidence for the appeal is not corroborated. As the petitioner did not provide any evidence to establish that the AAO's decision was incorrect, the motion will be dismissed.

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 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 reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.