

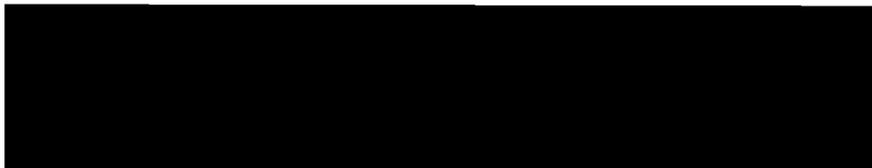
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



By

DATE: MAR 30 2012

OFFICE: NEBRASKA SERVICE CENTER



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 preference visa petition was denied by the Director, Nebraska Service Center. The matter subsequently came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed and the matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a Texas 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, concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer and that the petitioner would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel challenged the director's decision, contending that the petitioner's prior counsel was directly responsible for the inconsistency concerning the petitioner's ownership. With regard to the beneficiary's employment capacity, counsel referred to previously provided statements, contending that the petitioner had submitted sufficient evidence to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. Counsel also referred to the beneficiary's sworn affidavit in which the beneficiary provided additional information about his proposed employment.

After reviewing the appeal and the supporting evidence on record, the AAO rejected counsel's assertions, finding that the petitioner failed to overcome the grounds for denial. With regard to the first ground for denial—the petitioner's qualifying relationship with the beneficiary's foreign employer—the AAO found that the evidence submitted by the petitioner did not establish that a qualifying relationship existed at the time the petition was filed. With regard to the second ground for denial—the beneficiary's employment capacity in his proposed position with the U.S. entity—the AAO determined that the petitioner provided a deficient job description and further noted that information provided by the beneficiary in his own sworn statement indicated that the beneficiary himself would be responsible for numerous non-qualifying tasks. The AAO observed that given the petitioner's organizational hierarchy at the time of filing, the record failed to establish that the petitioner was capable of relieving the beneficiary from having to allocate the primary portion of his time to performing non-qualifying tasks.

On motion, counsel maintains that the petitioner's failure to establish the existence of a qualifying relationship was the direct result of prior counsel's error and asks the AAO to consider evidence of the formal complaint filed against the prior counsel. With regard to the beneficiary's employment with the U.S. entity, counsel asks the AAO to consider statements from alleged employees and documents pertaining to the petitioner's office space and employees.

The AAO finds that the petitioner's submissions do not meet the requirements of a motion to reopen or a motion to reconsider.

As a preliminary matter, the AAO notes that the motion process is not designed for the purpose of readjudicating an appeal and considering remedial actions taken by the petitioner in response to inadequacies that the AAO pointed out in its appellate decision. In order to meet the requirements for filing a motion to reopen or a motion to reconsider, the petitioner must meet a specific set of criteria. Specifically, the

regulation at 8 C.F.R. § 103.5(a)(2) states, 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.

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

The actions of prior counsel to which current counsel objects could have been addressed long before the AAO issued its decision. The claim against prior counsel was filed only after the AAO issued its findings in its latest decision. The AAO makes a similar finding with regard to statements from the beneficiary and SatishVarma, both of which were created after the AAO's decision and were clearly intended to address the deficiencies pointed out in the appellate decision. The AAO finds that additional documents that the petitioner has created as remedial measures in response to the director's adverse findings are not sufficient to warrant a reopening of the prior decision.

The regulation at 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 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.

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." The motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). 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.

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.