

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: OCT 02 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: SELF-REPRESENTED

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, Texas 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 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, finding that the petitioner failed to establish eligibility for the immigration benefit sought. The director concluded that the petitioner failed to establish: 1) that the beneficiary would be employed in the United States in a managerial or executive capacity, 2) that a qualifying relationship exists between the petitioner and the beneficiary's foreign employer, or 3) that the petitioner has the ability to pay the beneficiary's proffered wage.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal based on the determination that the petitioner failed to overcome the first two grounds of the denial. The AAO determined that the petitioner provided *prima facie* evidence of the petitioner's ability to pay the proffered wage as required by 8 C.F.R. § 204.5(g)(2). Accordingly, the AAO withdrew the third ground as a basis for denial and limited its decision to the first two grounds cited above.

On motion, the petitioner asks the AAO to reconsider its previously issued adverse findings. With regard to the beneficiary's employment capacity in his proposed position with the U.S. entity, the petitioner seeks to provide further information in response to the AAO's specific points and findings. With regard to the petitioner's qualifying relationship with a foreign entity, the petitioner cites case law in an effort to establish legal error on the part of the AAO.

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.

Turning to the issue of the beneficiary's employment capacity in his proposed position with the petitioning entity, the AAO finds that the petitioner 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. The petitioner cannot expect to succeed in meeting the regulatory requirements for a motion to reconsider simply by explaining or clarifying points that were previously made or by addressing deficiencies that were previously cited in the AAO's decision. As the above regulatory provisions indicate, the purpose of a motion to reconsider is to correct legal or factual error(s) that may have been made in the prior decision.

The petitioner did not cite any pertinent precedent decisions concerning the AAO's conclusion with regard to the beneficiary's employment capacity in the proposed position; nor did the petitioner establish that the AAO's decision was incorrect based on the evidence on record at the time of the decision. Regardless of the

merits of the petitioner's motion to reconsider with regard to the second basis for the AAO's decision, i.e., the petitioner's qualifying relationship with the beneficiary's employer abroad, 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. Therefore, the AAO need not address the second ground that served as a basis for the dismissal of the appeal.

Furthermore, 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. Therefore, 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 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.