

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]

B4

DATE: **OCT 18 2012** OFFICE: TEXAS 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,

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 reopen and reconsider. The motion will be dismissed.

The petitioner is a Texas corporation that seeks to employ the beneficiary as its director. 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 filed an appeal, challenging the director's decision. The petitioner provided a supplemental percentage breakdown of the beneficiary's proposed employment. The AAO dismissed the appeal, affirming the director's conclusion. The AAO also noted, beyond the decision of the director, that the petitioner failed to provide evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

On motion, counsel for the petitioner submits a supporting brief in which the primary focus is to provide further information pertaining to the beneficiary's respective positions with the foreign and petitioning entities. The petitioner also provides additional documentation including the foreign entities business documents and organizational chart, the petitioner's corporate documents and tax returns from 2009 and 2010, and tax documents pertaining to [REDACTED]

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.

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 petitioner provided documents that are either not new or are irrelevant to the key issues that served as grounds for the AAO's prior decision. First, with regard to the petitioner's tax documents that reflect the petitioner's staffing and income in 2009 and 2010, the AAO notes that a petitioner must establish eligibility at the time of filing the petition; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, any documents that reflect facts that had not yet materialized at the time the petition was filed, including the petitioner's post I-140 tax returns or acquisition of an ownership interest in another entity, are not relevant in the instant proceeding and will not be considered.

Additionally, with regard to the petitioner's submissions pertaining to the foreign entity, the AAO notes that the documents provided on motion predate the filing of the Form I-140 and no evidence has been submitted to establish that such documents were previously unavailable. Moreover, the record shows that through the issuance of a request for evidence (RFE) the petitioner was put on notice of required evidence regarding the

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

beneficiary's employment abroad and was given a reasonable opportunity to provide the missing evidence for the record before the visa petition was adjudicated. As pointed out in the AAO's prior decision, the petitioner failed to submit the requested evidence in response to the RFE and now looks to the motion as a means of addressing previously noted deficiencies. However, the AAO need not and will not consider the previously requested evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988).

In light of the above, the AAO finds that the petitioner has failed to meet the regulatory requirements for a motion to reopen.

The AAO now turns to the regulations at 8 C.F.R. § 103.5(a)(3), which 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.

In the instant case, 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. Rather, counsel relies on the motion as a vehicle for supplementing the record with information that addresses the various deficiencies previously discussed in the AAO's decision. However, as the regulations above expressly state, the purpose of a motion to reconsider is to correct any improper application of law or USCIS policy, not to allow the petitioner another opportunity to correct deficiencies that were noted on appeal. As counsel neither claimed nor provided evidence to show an error on the part of the AAO, the petitioner has failed to meet the requirements of the motion to reconsider.

In light of the above, the petitioner's motion to reopen and reconsider will be dismissed pursuant to the provisions at 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.

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.

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.