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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: **SEP 13 2012**

OFFICE: NEBRASKA 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:

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 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 request 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 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 initially approved by the Director, Nebraska Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke (NOIR) the approval of the preference visa petition, and his reasons therefore. The director ultimately revoked the approval of the petition. The Administrative Appeals Office (AAO) reviewed the director's decision and dismissed the appeal the petitioner filed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a New York 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.

In the decision revoking approval of the petition, the director determined that the Form I-140 was not approvable based on two grounds: 1) the petitioner failed to establish that it had been doing business for one year prior to filing the Form I-140 per 8 C.F.R. § 204.5(j)(3)(i)(D); and 2) the petitioner failed to establish that the beneficiary was an employee of the foreign entity.

After reviewing the matter on appeal, the AAO withdrew the second ground as a basis for the revocation, concluding that by failing to cite this ground in the notice of intent to revoke (NOIR) and allow the petitioner to respond to the adverse finding, the director was effectively precluded from citing the new ground as a basis for revocation. *See* 8 C.F.R. § 205.2(b).

Nevertheless, the AAO dismissed the appeal, concluding that the petitioner failed to overcome the primary basis for revocation by providing sufficient evidence to show that it meets the criteria set out at 8 C.F.R. § 204.5(j)(3)(i)(D).

On motion, counsel offers the same assertions that were previously introduced on appeal, first stating that U.S. Citizenship and Immigration Services rejected the petitioner's initial attempt to file the Form I-140 on July 30, 2007. In the alternate, counsel asserts that the petitioner is the successor-in-interest to a previously existing enterprise, which had been doing business during the relevant time period in question.

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.<sup>1</sup>

The assertions raised by counsel on motion are not new. Rather, as stated above, counsel raised these same assertions on appeal, which the AAO thoroughly reviewed and rejected. Despite counsel's explanation of the

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<sup>1</sup> 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).

change in the filing fees that apply to the filing of a Form I-140, the priority date, i.e., the date of filing, which appears on the petitioner's Form I-140 is July 30, 2007. The AAO therefore finds that the petitioner has failed to provide documentation that meets the above requirements that pertain to the filing of a motion to reopen.

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 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.

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. Moreover, the AAO notes that counsel neglected to address any of the various discrepancies the AAO cited in its decision either with regard to the statement from the petitioner's accountant, who provided information that was contrary to the New York statutory provisions, or the foreign document anomalies, which indicate that the foreign entity was already operating in the United States through a U.S. subsidiary prior to having requested and received an approval for such operation.

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

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.