



U.S. Citizenship
and Immigration
Services

[Redacted]

(b)(6)

DATE: **APR 02 2013** 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 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 \$585. 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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont Service Center. Upon further review of the record, the Director, Texas Service Center, 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 the approval of the preference visa petition, and his reasons therefore. The director ultimately revoked the approval of the petition and the petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO) where the appeal was summarily dismissed. The matter is now before the AAO on motion to reopen. The AAO will dismiss the petitioner's motion.

The petitioner claimed to be a wholesale, retail, and investment operation seeking 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 revoked the petition, concluding that the petitioner failed to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; (2) the beneficiary's proposed position with the U.S. entity would be in a managerial or executive capacity; and (3) the petitioner continues to do business in the United States. Additionally, as a result of the beneficiary's interview at the New York District Office, the director found that the petitioner submitted inconsistent evidence and thus concluded that the evidence was unreliable and insufficient for the purpose of establishing eligibility.

On appeal, counsel provided an overview of the procedural events that took place since the petitioner filed the Form I-140 and indicated that a brief and/or additional information would be submitted within 30 days in support of the appeal. However, by May 12, 2011, when the AAO reviewed the appeal, the record did not contain evidence showing that it had been supplemented in any way since the appeal was filed on November 23, 2010. The AAO therefore summarily dismissed the appeal pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v) which states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On motion, counsel provides evidence showing that the record was, in fact, supplemented with a statement from counsel requesting additional time in which to provide further supporting evidence. Counsel provided an explanation of her own personal reasons for the request of an extension of time. Counsel's supporting evidence shows that her statement was submitted on December 17, 2010, approximately five months prior to the AAO's review of the record.

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

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).

In the present matter, the only evidence counsel submitted in support of the motion dealt directly with counsel's personal reasons for being unable to submit supporting evidence that pertained to the AAO's summary dismissal of the appeal. The AAO finds that counsel's circumstances, while regrettable on a personal level, had nothing to do with the AAO's basis for dismissing the appeal. In fact, even if the AAO had received counsel's statement prior to its consideration of the appeal, the statement would have had no impact on the AAO's final determination. Counsel's statement did not identify specifically any erroneous conclusion of law or statement of fact. Therefore, the AAO's ability to review counsel's statement at the time of the appellate review would not have led the AAO to reach a different conclusion.

Similarly, in reviewing counsel's statement in the scope of a motion to reopen, the AAO finds that counsel has failed to state any new facts or provide affidavits or other documentary evidence that pertain to the AAO's basis for dismissing the 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.

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.