



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **AUG 02 2013**

Office: CALIFORNIA 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center ("the director"), denied the preference visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The AAO will grant the motion and affirm its decision. The petition will remain denied.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an intracompany transferee employed in a managerial or executive capacity. The petitioner, a Florida corporation, states that it is a flooring and international export firm. It claims to be an affiliate of [REDACTED] located in the Venezuela. The petitioner seeks to employ the beneficiary as its President.

The director denied the petition concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

The petitioner filed an appeal, in which it asserted that petitioning organization, in light of its reasonable needs, business purpose, and stage of development, can support a managerial or executive level position.

The AAO dismissed the petitioner's appeal, finding that the evidence did not support a finding that the beneficiary will be employed in a primarily managerial or executive capacity. The AAO found that the petitioner's description of the beneficiary's job duties was vague, and that the petitioner had failed to provide a more detailed job description in response to the director's specific request for a percentage breakdown of time the beneficiary will spend on each duty. Beyond the decision of the director, the AAO found that the petitioner failed to establish a qualifying relationship with the foreign employer and determined that the petition could not be approved for this additional reason.

The petitioner subsequently filed the instant motion to reopen. On motion, counsel for the petitioner states that the AAO made incorrect conclusions of fact regarding the corporate relationship and that the evidence of record establishes that the petitioner has a qualifying relationship with the beneficiary's foreign employer. With respect to the beneficiary's proposed employment capacity in the United States, the petitioner provides a position description with percentage of time for the beneficiary, position descriptions for her subordinates, and additional evidence of the beneficiary's qualifications.

Upon review, counsel's assertions are persuasive with respect to the issue of the petitioner's qualifying relationship with the foreign employer. The explanation provided on appeal clarifies that the petitioner and foreign entity have a qualifying affiliate relationship. Accordingly, the AAO will withdraw its previous adverse finding with respect to this issue alone.

However, counsel's assertions regarding the beneficiary's proposed employment in a managerial or executive capacity do not satisfy the requirements of a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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>

On motion, the petitioner provides a position description for the beneficiary which includes the percentage breakdown of the amount of time she will allocate to each duty, along with additional information regarding duties to be performed by her subordinate staff. The petitioner fails to state why this description was not previously submitted in response to the director's request for evidence or was otherwise unavailable previously. The petitioner has not submitted new facts supported by affidavits or other documentary evidence in support of its claim that the beneficiary will be employed in a qualifying managerial or executive capacity, and has not met the requirements of a motion to reopen with respect to this issue. Accordingly, the AAO will not disturb its previous finding that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity.

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).

### III. Conclusion

The AAO will withdraw its determination that the petitioner does not have a qualifying relationship with the foreign entity. The petition will remain denied based on the petitioner's failure to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The AAO's decision dated April 8, 2013 is affirmed in part and withdrawn in part. The petition is denied.

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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).