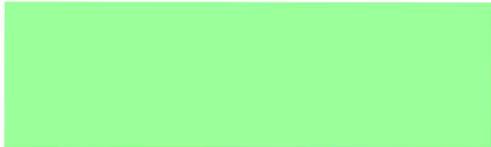


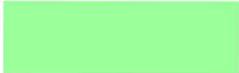


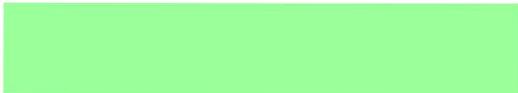
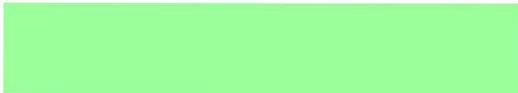
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 13 2013** OFFICE: NEBRASKA 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 (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 preference visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was dismissed and the matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a California corporation that seeks to employ the beneficiary as its financial manager. 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 a decision dated August 9, 2011, the director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed by the petitioner in a qualifying managerial or executive capacity. The director noted that the petitioner failed to comply with the request for the beneficiary's job duties with the foreign entity.

On appeal, counsel submitted a brief disputing the adverse conclusion pertaining to the beneficiary's proposed position with the U.S. entity. Counsel failed to address the director's adverse finding regarding the beneficiary's employment abroad, thus resulting in the AAO's dismissal of the appeal based on the petitioner's failure to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The AAO further found that the petitioner failed to overcome the director's determination that the beneficiary would not be employed in the United States in a qualifying managerial or executive capacity.

On motion, the petitioner provides a supplemental job description and states that it pertains to the beneficiary's foreign and proposed positions. The petitioner also provides a letter dated September 22, 2005 from the foreign entity's chief financial officer.

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

In the instant matter, neither the additional job description nor the letter from 2005 can be deemed as previously unavailable or undiscoverable. Therefore, the petitioner has failed to meet the requirements of a motion to reopen and the motion will be dismissed.

Next, turning to the requirements for a motion to reconsider, the petitioner must state the reasons for reconsideration and support those reasons with any pertinent precedent decisions to establish that the prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on 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 NEW COLLEGE DICTIONARY 753 (3rd Ed., 2008)(emphasis in original).

previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the “additional legal arguments” that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

In this case, the petitioner failed to support the motion with any precedent decisions or other comparable evidence to establish that the decision was based on an incorrect application of law or USCIS policy. Therefore, the motion to 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.