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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

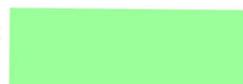


DATE:

AUG 13 2013

OFFICE: TEXAS SERVICE CENTER

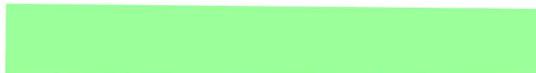
FILE:



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:

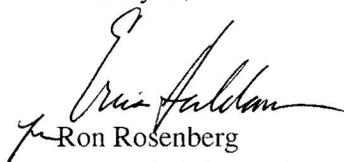


INSTRUCTIONS:

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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a Texas corporation organized on November 17, 2004. The petitioner states on the Form I-140, Immigrant Petition for Alien Worker, that it is engaged in investment and management services, employs 12 personnel, and reported a gross annual income of \$227,015 in 2010. It 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.

On December 21, 2012, the director denied the petition determining that the petitioner failed to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. The AAO dismissed the subsequently filed appeal. On motion, counsel checks the box on the Form I-290B, Notice of Appeal or Motion, indicating he is filing a motion to reopen.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).¹

On motion, counsel submits five documents: (1) an undated letter signed by the claimed parent company's partner asserting that the petitioner is 100 percent owned by [REDACTED] a company registered in India; (2) a barely legible copy of the petitioner's share register showing the foreign entity's name as shareholder; (3) a copy of the petitioner's Internal Revenue Service (IRS) Form 1120X, Amended U.S. Corporation Income Tax Return for 2010; (4) an IRS Tax Return Transcript for the original return filed for the period ending December 31, 2010; and (5) an IRS Tax Return Transcript for the original return filed for the period ending December 31, 2011.

The undated letter signed by the claimed parent company's partner notes that the petitioner did not realize that its accountant had not listed [REDACTED] as the petitioner's owner on the company's federal tax returns. The letter-writer indicates that the accountant had been informed of the petitioner's ownership and that a corrected return had been submitted to the IRS. As observed above, the photocopy of the petitioner's share register is barely legible but shows that 1,000 shares had been issued to [REDACTED]. The Form 1120X and the IRS Tax Return Transcript for the 2011 filing provided on motion had previously been submitted. Both the IRS Tax Return Transcripts for 2010 and 2011 indicate the transcript is for the original return filed. Both IRS Tax Return Transcripts do not include any information identifying the petitioner's response regarding its ownership on Schedule G or on Section E or K.

¹ Although counsel does not indicate he is filing a motion to reconsider, we observe that a motion to reconsider must: (1) 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 United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel's submission on motion does not satisfy any of these criteria. Accordingly, any motion to reconsider the AAO decision would also be dismissed.

Counsel asserts on motion, that the stock ledger contains only one entry dated January 2005 showing 1,000 shares were issued to the foreign company and a representative of the foreign company confirms its ownership of the petitioner. Counsel notes that the IRS Tax Transcripts show that 1,000 of the petitioner's shares had been issued.

As the AAO previously found, tax documents alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. Additionally, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. Although the petitioner submitted a stock ledger on motion, the record does not include any agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and other factors that affect the actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Moreover, the record does not include evidence that the foreign entity received any distribution of profit or accepted any liability in regards to its claimed ownership of the petitioner. The 2010 IRS Tax Return Transcript submitted on motion is for the original filing and does not include updated information from the IRS Form 1120X. Accordingly it does not provide new evidence relevant to the petitioner's ownership. The photocopy of the petitioner's stock ledger is insufficient to establish the petitioner's ownership. Similarly, a cursory statement from the partner of the beneficiary's foreign employer is insufficient in this matter to establish the petitioner's ownership.

As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding.² Here, no evidence in the motion contains new facts that were previously unavailable. In fact, the director previously requested a copy of the petitioner's stock register and the petitioner failed to provide it in response to the notice of intent to deny or on appeal. Further, the documents submitted on motion do not include relevant probative evidence sufficient to establish the petitioner's ownership.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated June 24, 2013, is affirmed.

² 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).