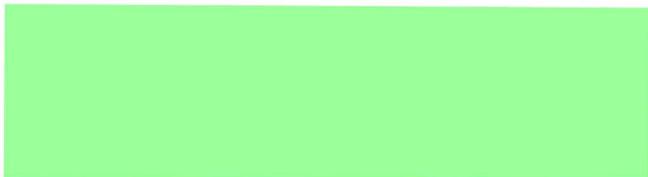




U.S. Citizenship
and Immigration
Services

(b)(6)

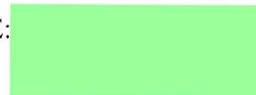


DATE:

AUG 22 2013

OFFICE: TEXAS SERVICE CENTER

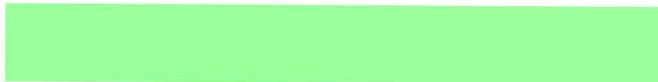
FILE:



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

Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on May 23, 2013, the AAO summarily dismissed the appeal. The matter is now before the AAO on a motion to reopen, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner is a New Jersey 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.

On August 10, 2012, the director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the petitioner did not present sufficient evidence to establish that the beneficiary had subordinates to carry out non-managerial duties associated with the company's day-to-day operations. The director found that the beneficiary's actual time devoted to non-qualifying functions would exceed that which is spent on managerial or executive duties for the U.S. company.

On September 6, 2012, the petitioner submitted the Form I-290B, Notice of Appeal or Motion, to appeal the denial of the underlying petition and indicated that it would submit a brief and/or supplemental evidence within 30 days. On May 23, 2013, the AAO summarily dismissed the petitioner's appeal, concluding that neither counsel nor the petitioner specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The AAO found that the petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, were simply insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner. The AAO also observed that the petitioner failed to submit a brief or supplemental evidence in support of the appeal. As no erroneous conclusion of law or statement of fact was specifically identified and as no additional evidence was presented on appeal to overcome the decision of the director, the appeal was summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The petitioner subsequently filed the instant motion to reopen the AAO's decision of May 23, 2013. On motion, the petitioner specifically states, in part:

A period of time was requested to file a brief. The case was transferred to the Administrative Appeals Office. A brief was not submitted because the petitioner's 2012 financial evidence was not as yet available. The appeal was denied on May 23, 2013. The reason given was that the petitioner did not identify an erroneous conclusion of law or statement of fact in the Center Director's decision nor was there a presentation of additional evidence.

At this time, the petitioner is filing this motioun [*sic*] containing additional evidence as well as legal arguments explainig [*sic*] the erroneous conclusion of law and failure to properly consider the evidenc [*sic*] presented.

The petitioner submits a brief and additional evidence which addresses the director's original decision from August 10, 2012 in an attempt to overcome the stated grounds for denial. The petitioner does not, however, address the findings of the very decision the current Form I-290B was meant to reopen - the AAO's decision summarily dismissing the petitioner's appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

On motion, the petitioner concedes that it failed to submit a brief or additional evidence in support of the appeal and indicates that this failure on its part was because its 2012 financial evidence was not available.

Upon review, the AAO summarily dismissed the appeal and clearly indicated that the petitioner failed to identify an erroneous conclusion of law or statement of fact in the director's decision. The petitioner concedes that it failed to submit a brief or supplemental evidence in the appeal and raises no specific objections to the AAO's decision to summarily dismiss the appeal.

The petition was denied on August 10, 2012 and the petitioner filed the appeal on September 6, 2012. On the Form I-290B, the petitioner simply stated that its attorney "requests a reasonable period of time to file a brief" and marked the box at Part 2 of the form, indicating that a brief would be submitted to the AAO within 30 days. On May 23, 2013, 259 days after the petitioner filed the appeal, the appeal was summarily dismissed by the AAO as a brief or additional evidence had not been received and because the petitioner's brief statements on the Form I-290B did not identify an erroneous conclusion of law or statement of fact as a basis for appeal. If the petitioner was in fact awaiting its 2012 financial evidence in order to submit a brief or additional evidence in support of the appeal, it had ample time to do so. Additionally, the director's original decision did not indicate that the petitioner's 2012 financial evidence was relevant to the original decision or necessary in order for the petitioner to overcome the noted deficiencies. Even if the petitioner had submitted its 2012 financial evidence in support of the appeal, the AAO would not consider such evidence in its decision as the petitioner must prove eligibility at the time of filing the petition. The petitioner filed the immigrant petition on November 21, 2011. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

The instant motion consists solely of evidence attempting to overcome the director's original decision and does not adequately address the AAO's decision to summarily dismiss the appeal. In fact, the petitioner concedes that it failed to submit evidence in support of the appeal, thus the AAO's decision was appropriate. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

The purpose of a motion to reopen is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. As such, the petitioner's legal arguments based on the service center director's original decision cannot be considered "new" facts or provide a reason for reconsideration of the AAO's appellate decision. Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of the AAO's decision issued on May 23, 2013. In the current proceeding, the petitioner has not overcome the grounds stated for dismissal of the appeal.

In addition, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The petitioner's motion does not contain this statement. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

ORDER: The motion is dismissed.