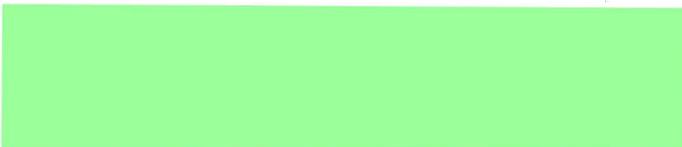


(b)(6)

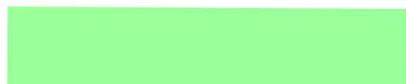


U.S. Citizenship
and Immigration
Services



DATE: **AUG 28 2013**

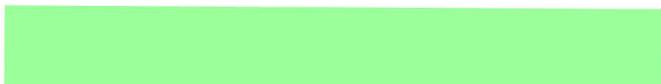
OFFICE: TEXAS SERVICE CENTER



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO), which dismissed the appeal. The petitioner subsequently filed a motion to reopen, which the AAO also dismissed. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed.

The petitioner is a Florida corporation engaged in the business of international freight forwarding. It seeks to employ the beneficiary as its marketing 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. The director denied the petition concluding that the petitioner failed to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner appealed the denial disputing the director's findings. In a decision dated June 19, 2012 the AAO dismissed the appeal affirming the director's decision on both grounds.

In support of the first motion, the petitioner provided additional evidence and disputed the AAO's decision in a supplemental brief. However, in a decision dated May 7, 2013 the AAO concluded that the petitioner's submissions did not meet the regulatory requirements for a motion to reopen and therefore dismissed the motion. More specifically, the AAO questioned the relevance of the petitioner's organizational chart, given that the beneficiary's employment with the petitioning entity was not among the issues addressed either by the director in the original denial or by the AAO in its decision dismissing the appeal. The AAO further found that the evidence submitted on motion could have been submitted previously in support of the petition, in response to the director's notice of intent to deny (NOID), or on appeal. Lastly, the AAO rejected the petitioner's claim of ineffective assistance of counsel, pointing out that the petitioner failed to complete a three-step remedial process delineated in a Board of Immigration Appeals precedent decision. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

In support of the current motion to reopen, the petitioner provides additional evidence addressing the beneficiary's employment abroad and the claimed qualifying relationship with the beneficiary's employer abroad. With regard to the beneficiary's employment abroad, the petitioner has submitted the following evidence: (1) a letter dated May 28, 2013 from a representative of the beneficiary's claimed foreign employer; (2) a set of un-translated payroll documents from 2005; and (3) an un-translated and undated foreign document, which the petitioner described as the foreign employer's social security tax information. With regard to the two latter sets of documents, the petitioner's failure to submit certified translations of the documents precludes the AAO from being able to determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

With regard to the petitioner's claimed qualifying relationship with the beneficiary's employer abroad the petitioner provides the following: (1) documents filed with the State of Florida on January 18, 2013 showing that [REDACTED] sought and was ultimately granted authorization to conduct business in Florida; (2) a foreign document dated September 30, 2010 showing an ownership distribution scheme for [REDACTED]; (3) a document dated September 9, 2003 from an accountant who also

provided the ownership distribution scheme of [REDACTED] as well as that of the U.S. petitioner; (4) a letter dated April 26, 2012 from Florida's Division of Corporations indicating that the petitioner filed an amendment to its Articles of Incorporation on April 24, 2012; and (5) a stock transfer document signed on October 20, 2010 showing a change of ownership pertaining to [REDACTED] accompanied by newly issued stock certificates reflecting the changes.

As with documents submitted in support of the petitioner's earlier motion, the supporting documents that accompany the instant motion to reopen do meet the regulatory requirements specified at 8 C.F.R. § 103.5(a)(2), which states, 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

To the extent that a considerable portion of the documents enumerated above, including the documents that pertain to the petitioner's qualifying relationship (enumerated above in Nos. 1, 2, 4, and 5) reflect circumstances or events that had not yet taken place as of March 8, 2010, the date the petition was originally filed, such documents are not relevant to the issue of whether or not the petitioner had established eligibility at the time of filing. Precedent case law has established that a petitioner must show 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. 1971).

Furthermore, with regard to the employment letter dated May 28, 2013, while the letter itself is new in the sense that it was created in response to the AAO's prior decision, the information contained in the letter cannot be deemed as new or previously unavailable. The record clearly shows that the subject of the beneficiary's employment abroad was addressed as far back as May 17, 2010 when the director issued a NOID. The petitioner was given the opportunity to respond to the NOID and/or supplement the record on appeal with whatever evidence or information deemed necessary to establish eligibility. The motion to reopen is not intended for the purpose of allowing the petitioner multiple opportunities to respond to the director's or to the AAO's adverse findings; rather, as previously indicate, the purpose of this motion is to allow the AAO to consider evidence that was not available for review at the time of the AAO's May 7, 2013 decision and thus could not have been submitted to support the prior motion. Here, the petitioner attempts to submit a letter containing information that could have been provided at any time prior to the AAO's dismissal of the appeal. As such, the AAO will not consider the contents of the letter in this latest motion to reopen.

Additionally, with regard to documents that predate the filing of the Form I-140, the petitioner has neither claimed nor submitted evidence to establish that such documents were previously unavailable. It is therefore unclear why such documents were not submitted earlier—prior to the denial of the petition or, alternatively, prior to the AAO's dismissal of the appeal.

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).

In summary, the AAO will not reopen this proceeding to consider documents that cannot be deemed as previously unavailable or documents that are irrelevant because they were either created for the sole purpose of addressing prior adverse findings or reflect circumstances or events that took place after the petition had been filed.

Therefore, the motion to reopen 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.