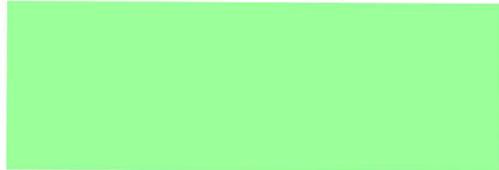




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 28 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: 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,

for 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). The appeal was summarily dismissed and the matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner is a Florida corporation that sought to employ the beneficiary as its general 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 the beneficiary would be employed in a managerial or executive capacity.

Counsel, on behalf of the petitioner, filed an appeal without providing any supporting statements or expressly disputing the director's findings. Rather, the Form I-290B was marked to indicate counsel's intent to submit an appellate brief within 30 days of the appeal. When the appeal was reviewed, the record contained no evidence indicating that a supplemental brief or additional evidence had been submitted to support the appeal. Accordingly, the AAO summarily dismissed the appeal.

On motion, the beneficiary submits a statement asserting that her attorney previously experienced legal problems, which allegedly resulted in a suspension of his license, and that he failed to follow through with the submission of supporting evidence in support of the petitioner's appeal. The beneficiary goes on to describe the various hardships she and her family have encountered and proceeds to list the various steps she has taken to remain in lawful immigration status since the filing of the appeal.

A review of the contents of the beneficiary's supporting statement indicates that the petitioner has failed to meet the requirements of a motion to reconsider.

A motion to reconsider must 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 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 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). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

In this case, the beneficiary has failed to support the motion with any pertinent precedent decisions or other comparable evidence to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. The beneficiary's hardships, while unfortunate, cannot be considered in determining whether the petitioner has met the motion requirements. The beneficiary is not an affected party in a visa petition and therefore does not, in her own right, have legal standing in this proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B).

Additionally, with regard to the beneficiary's contention that the appeal was dismissed due to prior counsel's negligence, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The record in this matter contains no evidence to indicate that the petitioner initiated and followed through with the three-step process described herein.

In light of the deficiencies described above, this motion to reconsider will be dismissed in accordance with the regulation at 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 dismissal of this motion does not bar the filing of a new visa petition, supported by the required evidence to demonstrate the petitioner's eligibility. The 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, 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 motion is dismissed.