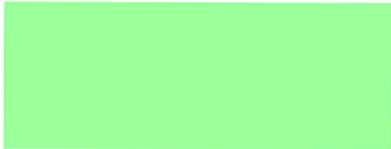


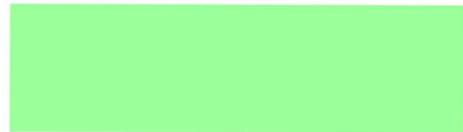


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 28 2013** OFFICE: NEBRASKA 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,

✓ Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the preference visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and, on October 28, 2011, the AAO dismissed the appeal. The petitioner filed a motion to reconsider the AAO's decision, and, on December 24, 2012, the AAO dismissed the motion. The matter is now before the AAO on a second motion to reopen and motion to reconsider, in accordance with 8 C.F.R. § 103.5. The motions will be dismissed.

The petitioner is a Washington corporation that seeks to employ the beneficiary in the United States as its "executive director." The petitioner seeks 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 May 18, 2009, the director denied the petition finding that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a managerial or executive capacity. The director also determined that the evidence of record suggests the petitioner and the beneficiary do not have an employer-employee relationship. In denying the petition, the director found that the petitioner failed to comply with the portion of the RFE that instructed the petitioner to establish that the beneficiary qualifies as either a manager or executive. The director further found that the petitioner failed to provide documentation pertaining to the foreign and U.S. entities' staffing and organizational hierarchies as well as the beneficiary's job duties with each entity.

The petitioner filed an appeal and, on October 28, 2011, the AAO dismissed the appeal and affirmed the director's decision to deny the petition, concluding that the petitioner failed to provide sufficient evidence to establish that the beneficiary's employment abroad and his proposed employment in the U.S. can be deemed as qualifying employment within a managerial or executive capacity.

The petitioner filed a motion to reconsider the AAO's decision, and, on December 24, 2012, the AAO dismissed the motion concluding that the petitioner failed to establish that the AAO's decision was incorrect based on the evidence of record at the time of the decision.

The petitioner subsequently filed the instant motion to reopen and motion to reconsider the AAO's decision of December 24, 2012. On motion, counsel for the petitioner submits a brief which solely addresses the beneficiary's duties at the foreign entity and his proposed duties at the U.S. company. The petitioner does not address the AAO's decision of December 24, 2012, the decision it is requesting be reopened and reconsidered.

Upon review, the AAO finds that the petitioner's assertions do not meet the requirements of a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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 Service policy. A motion to reconsider a decision on an application or

petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In other words, the purpose of a motion to reconsider is to contest the correctness of the original decision based on the previously established factual record. A motion to reconsider based on a legal argument that could have been raised earlier in the proceedings will be denied. *See Matter of Medrano*, 20 I&N Dec. 216, 219-20 (BIA 1990, 1991). The "reasons for reconsideration" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached by the AAO 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.

The instant motion consists solely of the petitioner's brief, which does not address the findings made in the AAO's decision and the specific deficiencies remarked upon therein. The brief states no new facts provided to support a motion to reopen, and states no reasons for reconsideration.

The purpose of a motion to reopen or motion to reconsider 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 reconsider must state the reasons for re-consideration and be supported by pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy. As such, the petitioner's previously submitted arguments based on the Service Center director's original decision cannot be considered to provide a reason for reconsideration of the AAO's appellate decision. The AAO previously conducted a *de novo* review of the entire record of proceeding and has already addressed the arguments contained in the petitioner's brief. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated.

Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented sufficient reasons, supported by pertinent precedent decisions, to warrant the reconsideration of the AAO's decision issued on December 24, 2012. In the current proceeding, the petitioner has not adequately addressed the grounds stated for dismissal of the previous motion or 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.