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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: **JUL 08 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Eric Feldman".

f Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO). On August 15, 2012, the AAO dismissed the appeal. The petitioner subsequently filed a motion to reopen and reconsider the AAO's dismissal of the appeal.¹ The motion will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary in the United States as its "executive and manager." 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 April 26, 2010, the director denied the petition concluding that: (1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; (2) the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage; and (3) the petitioner failed to establish that it had been doing business in the United States for one year when the petition was filed. On June 1, 2010, the petitioner appealed the denial disputing the director's findings.

On August 15, 2012, the AAO dismissed the appeal based on a finding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. The AAO provided a thorough analysis of the job description offered by the petitioner and found that the petitioner's statements lacked credible and detailed information about the beneficiary's actual daily job duties. The AAO further found that the petitioner's finances indicated that the beneficiary does not have sufficient subordinate employees to perform the services of the business and relieve her from performing non-qualifying duties. The AAO observed that the brief description of the beneficiary's duties indicate that she would be directly performing the services of the business. The AAO withdrew the director's findings that the petitioner failed to establish its ability to pay the beneficiary's proffered wage and failed to establish that it had been doing business for one year at the time the petition was filed.

The petitioner subsequently filed the instant motion to reopen and reconsider the AAO's decision of August 15, 2012. On motion, the petitioner submits a brief discussing the economic recession in the United States and stating that those facts were not considered in the final decision of the petition. The petitioner does not address the beneficiary's duties or attempt to explain the specific tasks the beneficiary performs on a daily basis. The petitioner also does not directly address the financial information referenced by the AAO in regards to the beneficiary's lack of subordinate employees to carry out the day-to-day operations of the company and relieve her from performing non-qualifying duties. The petitioner references and provides copies of published articles about downsizing and the recessed economy. The petitioner does not cite any statutes, regulations or precedent decisions.

¹ The petitioner marked the box at part two of the Form I-290B, Notice of Appeal or Motion, to indicate that it is filing an appeal. As AAO decisions are not appealable, the appeal will be treated as a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5.

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)(3) states:

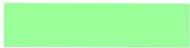
A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application 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.

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."

The instant motion consists of the petitioner's brief and several referenced articles. The petitioner makes no reference to the findings made in the AAO's decision and the specific deficiency remarked upon therein, provides no citations to relevant statutes, regulations or precedent decisions, and provides no new facts to support a motion to reopen or reconsider. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

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 reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. A motion for reconsideration 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. The AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant the re-opening or reconsideration of its decision issued on August 15, 2012. In the current proceeding, the petitioner has not adequately addressed 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.