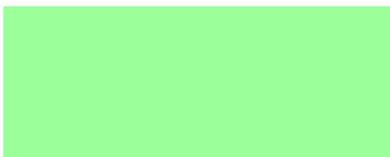




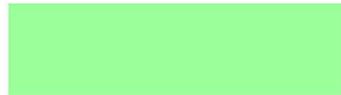
U.S. Citizenship
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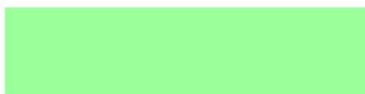


DATE: JUN 03 2013

Office: TEXAS SERVICE CENTER

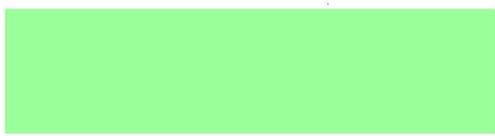


IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive of 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 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,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, revoked the approval of the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a Florida corporation that originally claimed to operate a gas station, grocery store, restaurant, and construction business. It seeks to employ the beneficiary as its administrative services 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 initially approved the petition. Upon further review of the record, the director determined that the petitioner was ineligible for the benefit sought based on its failure to establish that the beneficiary was employed abroad in a managerial or executive capacity and that the beneficiary would be employed in the United States in a managerial or executive capacity. The director revoked the approval of the immigrant petition after issuing a notice of intent to revoke and reviewing the petitioner's rebuttal evidence.

The petitioner subsequently filed an appeal. The AAO affirmed the director's decision to revoke the approval of the petition, finding that the petitioner failed to establish that the beneficiary was employed abroad in a managerial or executive capacity and that the beneficiary would be employed in the United States in a managerial or executive capacity.

The petitioner subsequently filed the instant motion to reopen. On the Form I-290B, Notice of Appeal or Motion, counsel for the petitioner states that the petitioner "has additional evidence which can be offered to overcome the concerns raised [sic] in the decision of AAO." Counsel states that the petitioner has requested additional supporting documents from Pakistan, and requests 30 days to submit the evidence. Counsel further indicates that the AAO misunderstood the petitioner's personnel hierarchy and stated that it will also be "clarifying the misunderstanding about the organizational chart" at a future date when the additional evidence becomes available. Counsel concludes by stating: "Petitioner and the undersigned Counsel just requests that before adjudicating this motion or rejecting it for want of supporting documents, we may be allowed additional 30 days so we can submit the documents we are awaiting to arrive from Pakistan." The motion to reopen consists solely of the Form I-290B.

The regulation at 8 C.F.R. 103.5(a)(2) states, in pertinent part: "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

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 II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

The petitioner did not submit any evidence in support of the Form I-290B. Instead, counsel requested an extension of time to submit a brief and additional evidence. The AAO notes that although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Therefore, counsel's request for 30 days in which to submit additional documentation is denied. Nevertheless, the AAO notes that the motion was filed on June 20, 2012, and, as of this date, the record reflects that the petitioner has not submitted a brief or supplemental 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."

As the petitioner's motion does not state new facts and is not supported by affidavits and/or documentary evidence, it does not meet the requirements of a motion to reopen and will be dismissed.

Motions for the reopening 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. *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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

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).

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 sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.