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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: [REDACTED] OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

JUN 11 2013

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:

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 preference visa petition was denied by the Director, Texas Service Center. The petitioner subsequently filed a motion to reopen, which the director dismissed, finding that the petitioner failed to meet the motion requirements. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that seeks 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.

In a decision dated April 18, 2012, the director denied the petition based on three grounds of statutory ineligibility finding that the petitioner failed to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; (2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and, (3) the petitioner has a qualifying relationship with the beneficiary's employer abroad.

On motion to reopen, filed on May 21, 2012, the petitioner addressed the deficiencies discussed in the denial by supplementing the record with evidence regarding the petitioner's ownership and additional information about the beneficiary's positions and job duties with the petitioner and the foreign employer. The petitioner also provided each entity's organizational chart accompanied by additional job descriptions to address the director's adverse findings with regard to the beneficiary's employment in a managerial or executive capacity with the foreign and U.S. entities.

In a decision dated June 22, 2012, the director dismissed the petitioner's motion concluding that the petitioner failed to submit new evidence and thus did not meet the requirements of a motion to reopen.

Through counsel, the petitioner now files an appeal asserting that the director abused his discretion by dismissing the previously filed motion. In the supplemental brief submitted in support of the appeal, counsel provides a synopsis of the petitioner's filing history, acknowledging that the director had denied prior petitions filed by the petitioner. Counsel asserts that the issue in the present matter is "the timeliness and relevance of the late submitted evidence" which the petitioner provided in support of the motion to reopen.

The AAO finds that counsel's assertions are not persuasive and fail to establish that the director erred in his decision to dismiss the petitioner's motion to reopen. The regulations at 8 C.F.R. § 103.5(a)(2) state, 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

As determined in the director's decision, there is no indication that the documents pertaining to the petitioner's ownership or the beneficiary's employment with the foreign or U.S. entities were previously unavailable. Therefore, such documents do not fit the requirements of a motion to reopen. Accordingly, the

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).

motion 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.

Furthermore, the AAO notes that the submitted evidence is not properly before the AAO for consideration on appeal. On January 12, 2012, the director issued a request for additional evidence asking specifically for proof of the original stock purchase to show that the required qualifying relationship exists. *See* section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms “affiliate” and “subsidiary”). The director asked for wire transfers, bank deposits, cancelled checks, or other financial documents to show that the claimed parent or affiliated company contributed funds to purchase the stock. The petitioner failed to submit a full response but now attempts to submit documents on motion and on appeal. The documents include a [REDACTED] bank statement, regarding the opening of the petitioner’s checking account, and the withdrawal of \$100,000 in cash from a personal certificate of deposit.

Not only is this evidence not new, but the director specifically requested this evidence. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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 appeal is dismissed.