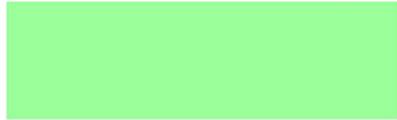




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 12 2013

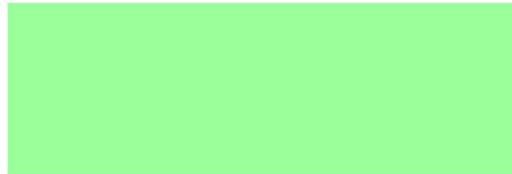
OFFICE: TEXAS SERVICE CENTER

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:



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 AAO inappropriately applied the law in reaching its 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 motion 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 any motion to 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 appealed the matter to the Administrative Appeals Office (AAO), where the appeal was dismissed. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed and the director's and the AAO's decisions will be undisturbed.

The petitioner is a "convenience store and gas station," that seeks to employ the beneficiary as its Vice President/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.

On August 25, 2010, the director denied the immigrant petition determining that the petitioner failed to establish that (1) the petitioner has a qualifying relationship with the beneficiary's foreign employer, (2) the beneficiary's employment abroad was within a qualifying managerial or executive capacity, and (3) the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal which the AAO dismissed on June 22, 2012. The AAO noted that the petitioner failed to submit sufficient evidence to show the beneficiary's eligibility for the immigrant petition and overcome the director's concerns.

On July 23, 2012, the petitioner filed Form I-290B and stated that it is filing a motion to reopen and a motion to reconsider, and a brief and/or additional evidence is attached.

As a preliminary matter, the AAO notes that while an appeal and a motion are both remedial actions, the legal purpose of an appeal is entirely distinct from that of a motion to reopen/reconsider. The AAO reviews appeals on a *de novo* basis, allowing the petitioner to supplement the record with any evidence or documentation that the filing party feels may overcome the grounds for the underlying adverse decision. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO's review of a motion to reopen or a motion to reconsider, however, is limited to evidence that fits the specific criteria at 8 C.F.R. § 103.5(a)(2) and 8 C.F.R. § 103.5(a)(3), respectively.

The regulations 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.<sup>1</sup>

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<sup>1</sup> 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 documentation submitted on motion included documents that were either submitted previously or could have been submitted prior to the motion. Several of the documents submitted on motion were the same documents submitted with the initial filing and with the appeal filing. A review of the evidence that the petitioner submits on motion reveals no fact that could be considered *new* under 8 C.F.R. § 103.5(a)(2). The evidence submitted was either previously available and could have been discovered or presented in the previous proceeding, or it post-dates the petition.

The petitioner's assertions do not satisfy the requirements of a motion to reconsider. 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.

On motion, the petitioner does not establish that the AAO's decision was based on an incorrect application of law or Service policy. The motion brief does not provide information or evidence that would establish a motion to reconsider. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

On motion, the petitioner did not overcome the AAO's concern that stock certificates number 1 and 2 were dated in August 2007 even though the petitioner stated that the stock transfer to the beneficiary's foreign employer occurred in July 2006. On motion, the petitioner states that the stock certificates dated in 2007 were for a corporation that was incorporated in Illinois and not in Alabama. On motion, counsel states that the Illinois corporation was "mistakenly formed and then closed."

The AAO also noted in its decision that the amended tax returns and the affidavits submitted by the petitioner cannot be deemed "independent objective evidence" in order to resolve the inconsistencies. The petitioner did not provide evidence or documentation to overcome this concern. The petitioner's assertion that a "mistake" was made is not sufficient evidence to establish the petitioner's ownership. As noted by the director, the petitioner signed the Form I-140 certifying that the evidence submitted with the petition is all true and correct. In addition, it is not clear why the petitioner waited until 2010 to amend the tax returns and fix the information regarding the ownership of the petitioner.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). When a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise concerns about the veracity of the petitioner's assertions.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors noted above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

In addition, the petitioner did not overcome the director's and the AAO's concerns regarding the fact that the petitioner failed to establish that the beneficiary's employment abroad and proposed employment with the U.S. entity are within a qualifying managerial or executive capacity. The petitioner's primary complaint is that the director denied the petition. The job descriptions of both the beneficiary's position abroad and the proposed position in the U.S. are virtually the same as the information previously submitted. The petitioner has not persuasively established that the AAO's decision was based on an incorrect application of law or Service policy. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulations. Accordingly, the petitioner's claim is without merit.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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." INS v. Abudu, 485 U.S. at 110. With the current motion, the movant has not met that burden.

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 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motions 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 motions are dismissed. The director's and AAO's decisions will be undisturbed.