

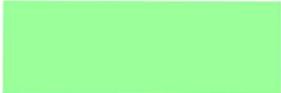


U.S. Citizenship  
and Immigration  
Services

(b)(6)



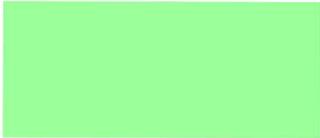
DATE: **JUN 13 2013** OFFICE: NEBRASKA SERVICE CENTER



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, Nebraska Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was dismissed and the matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a California corporation that seeks to employ the beneficiary as its CFO and general 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.

The director reviewed the petitioner's submissions and determined that the petitioner failed to establish that the beneficiary was employed abroad or that he would be employed in the United States in a qualifying managerial or executive capacity. The director found that the petitioner offered insufficient information about the beneficiary's job duties with each entity and also questioned the petitioner's ability to relieve the beneficiary from having to primarily carry out non-qualifying tasks given the company's limited support staff. The director therefore issued a decision dated June 14, 2010 denying the petition.

The petitioner subsequently filed an appeal disputing the director's findings. The AAO dismissed the appeal, disregarding third-party attestations that were offered for the purpose of establishing that the beneficiary was employed abroad in a qualifying managerial or executive capacity. With regard to the beneficiary's proposed employment, while the AAO acknowledged the director's oversight in failing to consider the part-time status of certain employees when calculating their hourly wages, it determined that the petitioner must nevertheless establish that its staffing at the time of filing the petition was sufficient to relieve the beneficiary from having to primarily perform the petitioner's daily operational tasks. The AAO questioned whether the beneficiary would consistently be required to perform duties in a primarily managerial or executive capacity during the petitioner's seasonal declines in business and staffing.

On motion, counsel, on behalf of the petitioner, submits a brief statement and offers additional evidence in an effort to address some of the AAO's adverse findings. Specifically, the petitioner provides additional job descriptions with percentage breakdowns describing the beneficiary's foreign and proposed employment, several untranslated foreign language documents, a state-issued contractor's license effective September 29, 2008, an invoice from the petitioner's accountant, and several business documents showing that the petitioner is doing business.

The AAO finds that neither counsel's assertions nor the petitioner's submissions are sufficient to meet the requirements of a 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.<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).

Counsel did not cite nor did the petitioner introduce any evidence or any new facts that were previously unavailable and that warrant the reopening of the AAO's prior decision. While the AAO acknowledges that the job descriptions submitted in support of the motion are new in the sense that they had not been previously submitted, there is no indication that these job descriptions were previously unavailable. In fact, prior to denying the petition, the director issued a request for evidence in which he expressly instructed the petitioner to provide more detailed information pertaining to the beneficiary's employment. Thus, the petitioner had ample opportunity to provide the requested evidence prior to the denial and could have provided additional clarifying information on appeal. Merely attempting to supplement the record with information that could have been provided at an earlier time does not meet the requirements of a motion to reopen, the purpose of which is to allow for the consideration of previously unavailable evidence.

The motion to reopen 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. The 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).

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 motion is dismissed.