



U.S. Citizenship
and Immigration
Services

(b)(6)

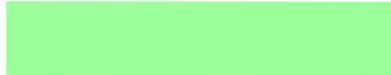


DATE: JUN 20 2013 OFFICE: TEXAS SERVICE CENTER

FILE

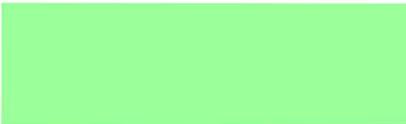


IN RE: Petitioner:
Beneficiary:



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 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, denied the preference visa petition and dismissed the petitioner's subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a Texas corporation that seeks to employ the beneficiary in the United States as its "director/president." 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.

In a decision dated June 25, 2011, the director denied the petition based on the following adverse findings: (1) the beneficiary provided inconsistent information to Customs and Border Protection officers at the time of his entry to the United States with regard to his employment abroad, citing a different employer than the one named in the documentation supporting the instant Form I-140; (2) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (3) the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Lastly, the director determined that the petitioner submitted falsified evidence in support of the petition and therefore issued a finding of fraud, which served as the fourth basis for denial.

On July 27, 2011, the petitioner filed a motion to reopen and reconsider asserting that it did not provide factually inconsistent evidence regarding the beneficiary's employment abroad. The petitioner further contended that U.S. Citizenship and Immigration Services (USCIS) overlooked crucial details in the record and issued the denial "with [a] preconceived mind set." The petitioner briefly disputed all of the director's adverse findings and asked that the matter be reopened and reconsidered on the basis of these allegations. The petitioner's motion consisted of a statement at Part 3 of the Form I-290B, Notice of Appeal or Motion, and was not accompanied by a brief or any additional evidence.

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

Regarding the motion to reconsider, the regulation at 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,

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).

when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In a decision dated June 25, 2012, the director dismissed the petitioner's motion concluding that the petitioner's statements in support of the motion did not meet the provisions of the regulatory requirements pertaining to the filing of a motion to reopen or reconsider. The director properly noted that the petitioner did not introduce any new, previously unavailable evidence, nor did it cite to any precedent case law, statute or regulation in support of an assertion that the decision was based on an incorrect application of law or USCIS policy.

The petitioner, through counsel, now files an appeal of the director's decision dismissing the motion to reopen and reconsider. Counsel addresses the director's original decision from June 25, 2011 in an attempt to overcome the director's original findings. Counsel does not, however, address the findings of the very decision to which the current Form I-290B was meant to appeal - the decision dismissing the petitioner's motion to reopen and reconsider.

The regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal of the director's decision dated June 25, 2012. Accordingly, in light of the fact that counsel has effectively failed to address, and therefore has not overcome, the director's adverse decision dismissing the petitioner's motion, the appeal will be summarily dismissed. Upon review, the director correctly determined that the petitioner's statement on the Form I-290B was insufficient to meet the requirements of either a motion to reopen or a motion to reconsider, and the motion was properly dismissed.

Further, even if the AAO considered counsel's assertions with respect to the denial of the petition on June 25, 2011, counsel fails to adequately address the findings in the director's original decision. The director denied the petition for the reasons stated above. In denying the petition, the director found that the petitioner and the beneficiary provided contradicting statements about the beneficiary's actual employment abroad and failed to corroborate its statements with documentation such as personnel records, pay stubs, or other evidence that would verify the beneficiary's employment at the qualifying foreign entity. The director further observed that the job description provided for the beneficiary's employment abroad was vague and failed to provide any specifics to identify his actual daily duties. The director also found that the job description provided for the beneficiary's position in the United States was similarly vague and failed to establish that he would be employed in a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner addresses only the derogatory information presented by the director relating to the beneficiary's actual employment abroad with a qualifying foreign entity. Counsel rebuts the

information cited in the original denial and indicates that the record reflects that the beneficiary was employed by the qualifying foreign entity for one continuous year within the three years preceding his entry to the United States. Counsel does not address the two additional grounds for denial of the petition, nor does counsel present any additional evidence for consideration on appeal. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.