



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUN 27 2013** OFFICE: TEXAS 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:

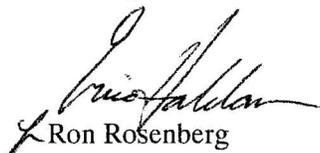
[Redacted]

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 initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition, and his reasons therefore.¹ The director ultimately revoked the approval of the petition and the matter was brought before the Administrative Appeals Office (AAO) when the petitioner filed an appeal. The AAO dismissed the appeal and the matter is now before the AAO on a motion to reconsider. The AAO will dismiss the petitioner's motion.

The petitioner is a Texas corporation which claimed five employees at the time of filing the petition and currently seeks to employ the beneficiary as its executive vice president. 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 June 25, 2010, the director revoked the approval of the petition with a finding of fraud. The director determined that the petitioner failed to provide sufficient probative and reliable evidence to establish that it has a qualifying relationship with the beneficiary's claimed foreign employer.

On appeal, counsel challenged the director's reliance on adverse evidence that pertained to the petitioner's prior counsel and his criminal fraud-based conviction.

On motion, counsel again challenges the director's finding of fraud in the original decision revoking the petition's approval. Counsel also seeks to invoke the protections under the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), despite the fact that the approval of the petitioner's Form I-140 approval was revoked thus indicating that the petition is no longer valid.

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

In the instant matter, the record clearly shows that the AAO dismissed the petitioner's appeal based on the lack of sufficient credible evidence establishing that the petitioner had a qualifying relationship with the beneficiary's prior employer abroad. Although the AAO referred to various inconsistencies and anomalies in support of its overall finding, it did not enter its own decision based on a finding of fraud and allowed the petitioner every opportunity to address the director's prior finding. While counsel cites to a number of precedent case law decisions in the current brief that has been submitted in support of the motion to reconsider, none of the cited cases apply to the very core of the AAO's decision, i.e., the finding that the

¹ Among other issues, the director observed in the notice that the petitioner's previous counsel, [REDACTED] had been convicted of immigration fraud in 2009. Specifically, on August 24, 2009, a judgment in a criminal case was entered in the U.S. District Court for the Southern District of Texas, Houston Division, after [REDACTED] pleaded guilty to conspiracy to engage in visa fraud, encouraging and inducing aliens for the purpose of commercial advantage and private financial gain to come to the United States, making false statements, and money laundering.

petitioner failed to provide adequate evidence to overcome the previously noted documentary inconsistencies and establish that the petitioner and the beneficiary's employer abroad were similarly owned and controlled such that would constitute a qualifying relationship. *See* 8 C.F.R. § 204.5(j)(2).

A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Most importantly, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. Here, counsel focuses on the director's finding of fraud, a finding that was not affirmed in the AAO's decision, and goes on to raise an entirely new claim based on the provisions of AC21, which counsel could have done on appeal if he deemed such argument applicable to the matter at hand.

The AAO finds that counsel's brief does not meet the requirements of a motion to reconsider, as counsel failed to point to a factual or legal issue that the AAO decided in error on appeal. Therefore, the petitioner's 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.

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).

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.