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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **MAR 04 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

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:

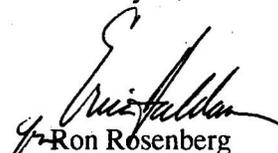
[Redacted]

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 denied by the Director, Texas 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 and reconsider. The motion will be dismissed.

The petitioner is a Puerto Rico corporation that seeks to employ the beneficiary as its president/CEO. 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.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary would be employed in a qualifying managerial or executive capacity; (2) the petitioner is doing business; and (3) the petitioner has the ability to pay the beneficiary's proffered wage.

The petitioner subsequently filed an appeal disputing the director's findings. The AAO determined that while the record contained sufficient evidence to overcome the adverse finding listed at no. 2 above, the same was not true of the adverse findings listed in nos. 1 and 3 above. Additionally, pursuant to a *de novo* review on appeal, the AAO issued another adverse finding, beyond the director's decision, concluding that the petitioner failed to provide sufficient evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

On motion, counsel provides a supplemental statement disputing the AAO's decision. Counsel asserts that the beneficiary performs job duties that are typical of a company president, including targeting corporate clients and finalizing deals with those clients. Counsel urges the AAO to consider "the realities of small business" in reviewing the petitioner's organizational hierarchy. With regard to the petitioner's ability to pay, counsel simply asserts that the petitioner provided "the best available evidence." Finally, in addressing the beneficiary's employment abroad, counsel simply disagrees with the AAO and asserts that the record has been supplemented with sufficient evidence establishing that the beneficiary was employed as the company's president.

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>

In the instant case, counsel does not indicate that any new evidence or information has been submitted for the AAO's review. Therefore, the petitioner has not met the requirements for a motion to reopen.

Next, turning to the motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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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).

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, counsel does not cite any legal precedent or applicable statute or regulations that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. Merely disagreeing with the AAO's findings is not sufficient to meet the specific requirements pertaining to the motion to reconsider.

The AAO further notes that counsel's only claim with regard to the beneficiary's employment abroad is that the beneficiary assumed the position of president. However, this fact is not in contention. Rather, the AAO found that the record lacked sufficient evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The beneficiary's position title alone does not establish that the beneficiary's employment abroad was primarily comprised of tasks within a qualifying managerial or executive capacity.

In light of the above, the 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.