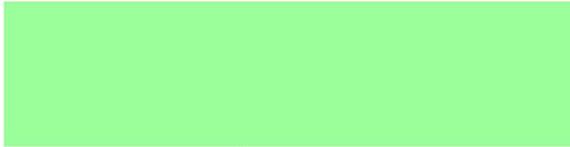




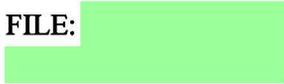
U.S. Citizenship  
and Immigration  
Services

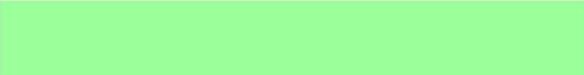
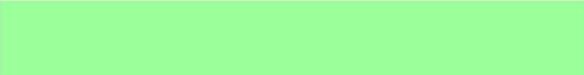
(b)(6)



DATE **MAR 12 2013**

OFFICE: NEBRASKA 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:

SELF-REPRESENTED

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, Nebraska Service Center, and a subsequent motion to reopen and/or reconsider was dismissed by the Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in TV broadcasting, and it seeks to employ the beneficiary as 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.

On August 20, 2011, the director denied the petition concluding that: (1) the petitioner failed to establish the existence of a qualifying relationship between the beneficiary's foreign employer and the petitioner; (2) the petitioner failed to establish that the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity; and, (3) the petitioner failed to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity.

The petitioner subsequently filed a Form I-1290B. The Form I-1290B was initially received on September 22, 2011 but was subsequently rejected by United States Citizenship and Immigration Services ("USCIS"). USCIS sent a Form I-797C, Rejection Notice, to the petitioner with a notice date of September 28, 2011, that indicated that the Form I-290B, the fees and supporting documentation were being returned to the petitioner since the Form I-290B was rejected. The form stated that the Form I-290B was rejected because the application was not fully completed as one or more fields of Part 2. Information about Appeal or Motion, was not properly completed.

The petitioner re-filed the Form I-1290B on October 3, 2011, or 44 days after the decision was issued, indicating that it was filing a motion to reopen and/or a motion to reconsider. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen a proceeding before the service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that a delay was reasonable and beyond the control of the applicant or petitioner.

On April 24, 2012, the director dismissed the motion concluding that the motion was received untimely and the petitioner did not provide an excusable reason for the delay.

On May 24, 2012, the petitioner filed a new Form I-290B to appeal the director's decision. On appeal, the petitioner contends that the initial Form I-290B was filed properly and was not untimely. On appeal, the petitioner states that "unfortunately, your mailing clerks returned this mail package include [sic] filing fee check of \$630 to the petitioner dated on September 30, 2011

due to unknown reason.” The petitioner also states that the “petitioner has also resubmitted this package to your office on 9-30-2011 by express mail,” and “this was the main reason why your office finally received this file on Oct 3, 2011.”

The petitioner’s brief on appeal does not overcome the director’s decision concluding that the previous motion was untimely filed. The petitioner does not acknowledge that it received a Form I-797C, Rejection Notice, that clearly explained that the Form I-290B was rejected since the form was not complete. The petitioner also does not provide any explanation as for the reason the motion was filed late. 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)).

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See* sec. 291 of the Act, 8 U.S.C. 1361; *see also* *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 Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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 Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)). In evaluating the evidence, the truth 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.

Here, the submitted evidence does not meet the preponderance of the evidence standard.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 dismissed.