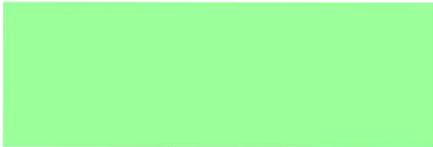




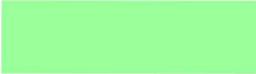
**U.S. Citizenship  
and Immigration  
Services**

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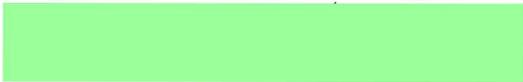


DATE: **MAR 19 2013**

OFFICE: TEXAS SERVICE CENTER



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, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO), where the appeal was dismissed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed; the previous decisions will not be disturbed.

The petitioner is a California corporation engaged in cargo transportation and it seeks to employ the beneficiary as a manager. Accordingly, the petitioner endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition on October 12, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal which the AAO dismissed on July 2, 2012, affirming the director's original finding and discussing two additional grounds for denial.

On July 25, 2012, the petitioner filed Form I-290B and states that it is filing a motion to reopen and a motion to reconsider. The petitioner submitted a brief in support of the motion.

While an appeal and a motion are both remedial actions, the legal purpose of an appeal is distinct from that of a motion to reopen/reconsider. The AAO reviews appeals on a *de novo* basis, allowing the petitioner to supplement the record with any evidence or documentation that the affected party feels may overcome the grounds for the underlying adverse decision. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). However, the AAO's review of a motion to reopen or a motion to reconsider is limited to evidence that fits the specific criteria discussed at 8 C.F.R. § 103.5(a)(2) and 8 C.F.R. § 103.5(a)(3), respectively. Submitting evidence that does not fit the regulatory criteria will not suffice.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part: "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>

On motion, the petitioner provided a brief that outlines sections of the AAO's decision and lays out the grounds for challenging the decision. The petitioner did not submit any additional evidence. Since the petitioner submits no new evidence, the motion reveals no fact that could be considered *new* under 8 C.F.R. § 103.5(a)(2).

The regulations outline the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(2) 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.

On motion, the petitioner submits a brief with the same job descriptions submitted previously for the beneficiary's position abroad and for the proffered position in the United States. The petitioner also states that the AAO's decision was incorrect when it stated that the petitioner failed to respond to two Notices of Intent to Deny ("NOID"). The petitioner contends that "there's nothing in the record that suggests petitioner failed to respond to two NOIDS." The petitioner also stated that the director did not mention that the petitioner failed to respond to two NOIDS, and the "director most certainly would have used such discrepancy to deny petitioner form I-140."

In reviewing the file, there is no evidence that the petitioner's responded to the director's first NOID, issued on April 19, 2010. It appears that the petitioner submitted additional documentation for the filing on April 12, 2010 but this was prior to the director's NOID, dated April 19, 2010. Thus, the additional documentation sent by the petitioner on April 12, 2010 does not qualify as a response to the director's NOID, dated April 12, 2010.

In addition, on June 10, 2010, the director sent a second NOID since no response was received from the petitioner for the April 19, 2010 NOID. The petitioner submitted a letter on June 17, 2010, indicating that the Form I-140 had already been approved and since the director did not send a Notice of Intent to Revoke, the petitioner requested an explanation as to why USCIS requested the additional information. Thus, the petitioner did not directly respond to the evidence requested from the director in the NOID.

In addition, the petitioner states that the "evidence submitted are fully sufficient for the approval of forms I-140 and Beneficiary's form I-485." The petitioner also states that the petitioner has been approved previously for individuals that were transferred to the U.S. as managers.

Despite the claimed previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approval by denying the instant petition.

A review of the record and the adverse decision indicates that the director and the AAO properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director denied the petition. The petitioner insists that it provided sufficient documentation and that the petitioner's business is important. However, both decisions clearly outlined the conflicting information and the documentation that the petitioner failed to submit. Ultimately, the petitioner submitted

insufficient evidence to establish eligibility for the immigration benefit sought. Accordingly, the petitioner's claim is without merit.

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 the 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. As noted in the director's decision and the AAO's decision, the petitioner did not provide sufficient relevant, probative, and credible evidence to establish that the petitioner meets the regulatory requirements to establish eligibility for the I-140 immigrant visa petition.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

The regulation at 8 CFR § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion will be dismissed. The director's and AAO's decisions will not be disturbed. The petition is denied.