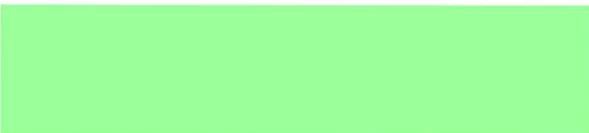


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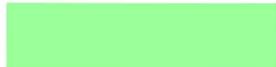
U.S. Citizenship
and Immigration
Services



DATE:

OFFICE: TEXAS SERVICE CENTER

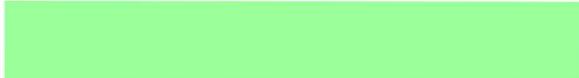
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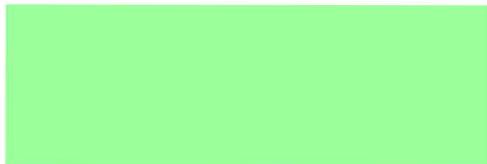
Petitioner:



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 preference visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reconsider with the Texas Service Center where the motion was dismissed. The matter is now before the Administrative Office Appeals (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation that seeks to employ the beneficiary as its 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 the original decision dated February 28, 2012, the director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed a motion to reconsider. The motion was supported by a brief from counsel, who sought to address deficiencies that the director previously noted in the denial.

The director dismissed the motion concluding that the petitioner did not meet the requirements for a motion to reconsider, which requires the petitioner to establish that the prior decision was erroneous based on the evidence that existed at the time the decision was issued. The director rejected counsel's attempt to clarify certain points made with regard to evidence that had been previously submitted.

On appeal, counsel submits a brief in which he refers to the director's original decision where the petition was denied. Counsel asserts that the original denial was deficient and failed to consider certain evidence.

As a preliminary matter, the AAO notes that while matters on appeal are reviewed on a *de novo* basis, the subject matter for review will be limited to those issues that were addressed in the prior adverse decision. In this matter, the director's June 26, 2012 decision, which the petitioner now seeks to appeal, addressed the petitioner's motion to reconsider, explaining that the motion was being dismissed based on the finding that the petitioner did not meet the regulatory requirements for the motion to reconsider. Therefore, the AAO's key task on appeal is to conduct a *de novo* review of the record to determine whether the director properly dismissed the petitioner's motion.

If counsel's goal was to clarify evidence previously submitted and/or to address the director's adverse findings in an attempt to overcome the grounds for denial, then counsel should be advised that the appropriate course of action would have been to file an appeal in response to the decision dated February 28, 2012. When the petitioner chooses to first file a motion with the service center, the AAO's appellate review will be limited to the subject matter of the decision being appealed. Here, the petitioner did not appeal the February 28, 2012 decision in which the director discussed the grounds for denying the petition. Instead, the petitioner filed an appeal in response to the director's June 26, 2012 decision, where the director's discussion was limited to addressing the requirements of a motion to reconsider and explaining how the petitioner failed to meet those requirements.

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 present matter, counsel submits a supporting brief indicating his intention to clarify the dates of the beneficiary's employment abroad. Counsel claims that the time period of the beneficiary's employment was not apparent at the time of the director's prior review of the record. Counsel also asserts that the director was wrong to adversely find that the petitioner failed to submit a detailed description of the beneficiary's specific job duties with the foreign entity given that the request for evidence (RFE) did not expressly instruct the petitioner to provide such information.

Considering counsel's assertions in light of the requirements for a motion to reconsider, the AAO finds that the motion was properly dismissed. Despite counsel's desire to clarify information that was previously submitted, a motion to reconsider requires the petitioner to establish an error on the part of the individual who issued the decision. The very fact that counsel finds the need to clarify information that was previously presented suggests that the director's interpretation was reasonable based on the facts he had before him at the time of making the decision to deny the petition. Providing further evidence to clarify information that was previously submitted is best done by appealing the decision, which thereby allows the AAO to conduct a comprehensive review of the record and to consider all of the petitioner's submissions anew. Evidence that is permitted for submission in support of a motion to reconsider is limited pursuant to the regulatory provisions expressly discussed at 8 C.F.R. § 103.5(a)(3).

Additionally, counsel's objection to an incomplete RFE also fails to meet the requirements of a motion to reconsider, as the director is empowered with the discretionary authority to determine whether an RFE is to be issued. *See* 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii). To clarify, the director can choose to deny a petition without ever issuing an RFE or a notice of intent to deny. Contrary to counsel's understanding, there is no requirement that a denial may only be based on issues that were specifically addressed in an RFE. As such, the director may make an adverse finding regarding the petitioner's failure to submit certain supporting evidence even when such evidence was not expressly requested in the RFE.

Applying the above rationale to the matter at hand, the petitioner is required to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Regardless of whether the RFE instructed the petitioner to provide more detailed information about the beneficiary's job duties abroad, the petitioner is still required to meet certain statutory and regulatory requirements. Here, the director determined that he could not conclude that the beneficiary was employed abroad in a qualifying capacity because the record lacked sufficient information about the job duties the beneficiary performed. The petitioner is not relieved from the burden of having to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity just because the director did not ask the petitioner to provide additional information pertaining to the beneficiary's specific job duties. It follows, therefore, that the director is not precluded from issuing an adverse conclusion based on the finding that the record lacked sufficient information about the beneficiary's position abroad.

While it appears that counsel is looking to the AAO to determine whether the findings in the director's original decision were correct, the AAO is not permitted to review those issues on appeal in this matter. As noted above, the AAO's review is limited to the subject matter that was addressed in the decision that is currently being appealed. Here, the June 26, 2012 decision that is being appealed deals only with the

petitioner's motion to reconsider. Therefore, the AAO's foremost concern is to determine whether the director was correct in his conclusion that the petitioner failed to meet the requirements for a motion to reconsider.

Turning to the assertions put for in the appellate brief, it is clear that counsel aims to revisit issues that were addressed in the director's original denial. Counsel does not address the requirements of the motion to reconsider and thus fails to establish that the director erred in concluding that the petitioner failed to meet the requirements of the motion.

Furthermore, after having reviewed counsel's brief in support of the motion the AAO finds that counsel did not cite any pertinent precedent decisions that establish that the director's decision was based on an incorrect application of law or Service policy. Counsel also failed to establish that the director's decision was incorrect based on the evidence the director had available to him at the time of the initial decision. Therefore, the AAO finds that the petitioner failed to meet the requirements of a motion to reconsider and the motion was properly 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.

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 appeal is dismissed.