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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 0 7 2013 OFFICE: TEXAS 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:

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) where the appeal was dismissed. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a Florida corporation engaged in the business of international freight forwarding. It seeks to employ the beneficiary as its marketing manager. 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 July 9, 2010, the director denied the petition concluding that the petitioner failed to establish that (1) the beneficiary was employed abroad in a managerial or executive capacity; and (2) the petitioner has a qualifying relationship with the beneficiary's employer abroad.

The petitioner appealed the denial disputing the director's findings. The AAO issued a decision dated June 19, 2012 dismissing the appeal. The AAO affirmed both of the grounds of ineligibility cited in the director's decision. With regard to the beneficiary's employment abroad, the AAO found that the petitioner submitted a deficient job description that failed to convey a meaningful understanding of the beneficiary's actual daily tasks. The AAO further determined that the record lacked sufficient evidence, such as pay slips or a letter of employment from the foreign entity, confirming that the beneficiary was actually employed by the foreign entity as claimed. With regard to the issue of a qualifying relationship, the AAO found that neither share certificates nor an amendment of the articles of incorporation can serve as adequate proof of ownership and control of a corporate entity.

On motion to reopen, the petitioner provides a brief and additional supporting evidence in an attempt to respond to the AAO's various adverse findings and to provide more detailed information to establish eligibility.

The AAO finds that none of the additional supporting evidence meets the requirements of a motion to reopen.

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.[1]

On motion, the petitioner provides its own organizational chart, the relevance of which is questionable at best, as the beneficiary's proposed employment with the U.S. entity was not among the cited grounds for denial. The petitioner also provides documentation with regard to the beneficiary's employment abroad, seeking to establish that the beneficiary was employed by the foreign entity as claimed, as well as previously

[1] 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).

submitted evidence regarding the petitioner's ownership and documents regarding the foreign entity's ownership, the latter of which are irrelevant in light of the petitioner's claim that it is a subsidiary of the foreign entity.

The AAO notes that while some evidence may be new in the sense that it had not been previously submitted, none of the supporting documents can be deemed as having been previously unavailable, as the documents had existed long before the appeal was filed and could have been submitted previously in support of the petition, in response to the notice of intent to deny, or more recently in support of the appeal.

While the petitioner indicates that the failure to provide adequate supporting documentation was the fault of the petitioner's prior counsel, it is noted that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has provided no evidence in the present matter to indicate that the criteria described above has been met. Therefore, the petitioner's claim cannot be used to excuse the petitioner's submission of inadequate documentation prior to the AAO's dismissal of the appeal.

If the petitioner seeks consideration of documents that were not previously submitted and which do not fit the requirements of a motion to reopen, the petitioner may file a new petition. However, the motion in the present matter 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.