

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

(b)(6)

DATE: **MAY 07 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: 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 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 subsequently filed a motion to reopen and reconsider, which the director dismissed. The petitioner filed an appeal with the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider, which the AAO will also dismiss, affirming its prior decision.

The petitioner is a healthcare staffing and IT staffing services entity that seeks to employ the beneficiary as its director of international recruitment and immigration. 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 and the petitioner's subsequently filed motion to reopen concluding that 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 or that the initial job opportunity was a legitimate job offer. The petitioner filed an appeal disputing the director's findings.

In a decision dated June 19, 2012, the AAO dismissed the petitioner's appeal, which was filed in response to the director's February 17, 2010 decision dismissing the petitioner's motion to reopen. The AAO determined that the petitioner failed to provide sufficient evidence to establish that the beneficiary's time spent performing tasks within a qualifying managerial or executive capacity would exceed the time spent performing non-qualifying operational tasks. The AAO observed that the petitioner made material changes to the petition by significantly altering the beneficiary's job duties, which did not previously include managing country managers who were not mentioned as part of the beneficiary's original job description. The director noted that the petitioner failed to provide evidence to show that the petitioner has offices in the countries that it listed in the organizational chart. Finally, the AAO issued an additional finding, beyond the decision of the director, concluding that the petitioner failed to provide sufficient evidence of the job duties the beneficiary performed during his employment abroad, thereby failing to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

On motion, the petitioner disputes the AAO's decision, laying out the various grounds for its assertions. The petitioner disagrees with a number of the AAO's findings and attempts to explain why such findings were incorrect. The petitioner also cites to one Massachusetts criminal court case and provides additional documents in support of the petitioner's motion.

Upon reviewing the petitioner's submissions, the AAO finds that the petitioner has failed to meet the requirements of a motion to reopen and reconsider.

Turning first to the 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

The petitioner has provided supporting documents, including an affidavit date stamped August 11, 2009 and a 2005 facsimile accompanied by balance sheets, two invoices, and a copy of articles of incorporation executed on April 18, 2002, establishing the existence of an entity in Saipan, Commonwealth of the Northern Mariana Islands. The documents the petitioner has submitted cannot be deemed as new and previously unavailable. Therefore, they do not meet the criteria for a motion to reopen.

Turning to the motion to reconsider, 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.

While the petitioner cites to the case of *Commonwealth of Massachusetts v. David A. Laperie*, 19 Mass. App. Ct. 424, there is no discussion included in the petitioner's supporting brief to explain how the cited criminal case, which dealt with a defendant who was convicted of drug possession, is in any way relevant to the matter at hand. Accordingly, the AAO finds that the petitioner does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal.

In light of the above, the motion to reopen and reconsider 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.

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).