



U.S. Citizenship
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Services

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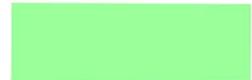


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OFFICE: TEXAS SERVICE CENTER

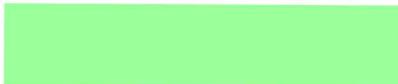
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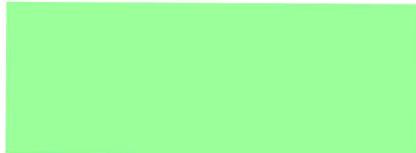
Petitioner:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) and the AAO dismissed the appeal. The petitioner subsequently filed a motion to reopen and reconsider the AAO's dismissal of the appeal. The AAO dismissed both motions and the matter is now before the AAO on a third motion to reconsider. The motion will be dismissed.

The petitioner is a Maryland corporation engaged in the business of international trade. It 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.

On November 19, 2009, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. On December 22, 2009, the petitioner appealed the denial disputing the director's findings. On December 12, 2011, the AAO dismissed the appeal. The AAO provided a thorough analysis of the job description offered by prior counsel and found that counsel's statements lacked credible and detailed information about the beneficiary's actual daily job duties. In addition, the AAO found that the petitioner failed to provide sufficient evidence to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) the petitioner has a qualifying relationship with the beneficiary's prior foreign employer. On January 13, 2012, the petitioner filed a motion to reopen and a motion to reconsider the AAO's decision. On April 1, 2013, the AAO dismissed the motion as neither counsel nor the petitioner cited any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. On April 30, 2013, the petitioner filed a second motion and marked the box at part two of the Form I-290B to indicate that a brief and/or additional evidence would be submitted to the AAO within 30 days. On June 28, 2013, the AAO dismissed the motion as the brief was not received within the allotted 30 days.

On July 29, 2013, the petitioner filed the instant motion to reconsider the AAO's decision of June 28, 2013. The motion is based on its "memorandum" submitted in support of the previous motion, but was received by the AAO after the decision was sent to the petitioner.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

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 [U.S. Citizenship and Immigration Services (USCIS)] 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

The instant motion consists of a "memorandum" submitted by counsel. First, counsel for the petitioner revisits the fact that the petitioner has had several L-1A petitions approved on behalf of the same beneficiary and states that "the USCIS does have the burden to state why the previous petitions were erroneous and to explain inconsistent decisions." Counsel goes on to state that the AAO has not done this in its previous decisions. This assertion is not accurate. The AAO has thoroughly explained why the current petition does not meet the statutory and regulatory requirements and indicated that if the previous petitions were approved based on the same evidence presented in the instant petition, then those approvals were erroneous. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedlin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Second, counsel for the petitioner addresses the beneficiary's role in a position of a primarily managerial capacity. Counsel indicates that the evidence presented establishes that the beneficiary meets the statutory requirements and the AAO failed to consider the evidence in the record. This assertion is also not accurate. In the present matter, counsel for the petitioner does not establish that the decision was based on an incorrect application of law or fact. Here, counsel for the petitioner merely indicates that the beneficiary does meet the statutory requirements to be considered a manager; however, counsel for the petitioner does not establish that the AAO reached an incorrect conclusion in considering the evidence. In fact, in its decision, the AAO lists the evidence submitted by the petitioner and thoroughly discusses how that evidence fails to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

Third, counsel for the petitioner makes a brief comment about the AAO's finding that the petition cannot be approved because the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. On motion, counsel for the petitioner simply states that the AAO contradicts itself by stating in its December 12, 2011 dismissal that the "petitioner and the beneficiary's foreign employer are both owned by the beneficiary[.]" and in its April 1, 2013 dismissal, that "there is an adverse finding with regard to the lack of evidence showing a qualifying relationship between the petitioner and the beneficiary's foreign employer." This comment is not accurate in that the AAO initially made this finding in its December 12, 2011 decision and indicated that for this additional reason, the petition cannot be approved.

Furthermore, in its original December 12, 2011 decision, the AAO made an additional finding not addressed by counsel on motion: the lack of evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Counsel for the petitioner does not address this issue on motion and for this additional reason, the petition cannot be approved.

The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a

motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. A motion for reconsideration must state the reasons for re-consideration and be supported by pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy. As such, counsel's assertions, as described above, do not provide a reason for reconsideration of the AAO's appellate decision. The AAO previously conducted a *de novo* review of the entire record of proceeding and has already addressed the arguments contained in counsel's brief. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated.

Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented sufficient reasons, supported by pertinent precedent decisions, to warrant the reconsideration of the AAO's decision issued on June 28, 2013. In the current proceeding, counsel has not adequately addressed the grounds stated for dismissal of the motion.

In addition, the regulation at 8 C.F.R. §103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The petitioner's motion does not contain this statement. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See 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 motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. 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 is dismissed.