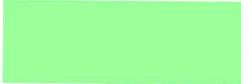


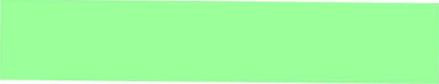
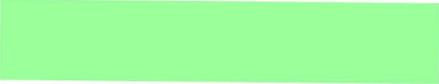


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **OCT 22 2013** OFFICE: NEBRASKA 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:

SELF-REPRESENTED

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 preference visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO), which dismissed the appeal. The petitioner subsequently filed two successive motions - first a motion to reopen and reconsider and later a motion to reopen - both of which were dismissed by the AAO. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss this motion.

The petitioner is a North Carolina corporation engaged in the business of international trade. It seeks to employ the beneficiary as its vice 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.

The director denied the petition based on two grounds of ineligibility, concluding that the petitioner failed to establish that: 1) the beneficiary was employed abroad in a qualifying managerial or executive capacity and 2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On February 15, 2012, the AAO dismissed the petitioner's appeal, finding that the petitioner failed to state the beneficiary's specific tasks or to offer time allocations for those tasks with regard to the beneficiary's foreign and proposed employment. In addition to finding that the petitioner offered deficient job descriptions, the AAO also questioned whether the petitioner sufficient staff to relieve the beneficiary from having to allocate his time primarily to the performance of the company's non-qualifying operational tasks. Additionally, the AAO made a finding beyond the director's decision, concluding that the petitioner submitted insufficient documentation concerning its claimed parent-subsidiary relationship with the beneficiary's last foreign employer.

On motion, counsel focused on the beneficiary's leadership position and introduced evidence addressing the two original grounds for denial as well as a letter dated March 7, 2012 from the petitioner's accountant to address the AAO's additional finding.

The AAO dismissed the petitioner's motion in a decision dated March 4, 2013, concluding that the submission of evidence that had been previously submitted cannot be deemed as being previously unavailable and thus does not meet the requirements of a motion to reopen. Moreover, the AAO emphasized that the petitioner failed to provide a supplemental job description, which the director requested prior to the original denial, and therefore declined to consider the previously requested evidence, citing precedent case law in support of its decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The AAO notified the petitioner that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

With regard to the petitioner's motion to reconsider, the AAO determined that counsel failed to cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. The AAO also clarified that the beneficiary's leadership position is not synonymous with being employed in a managerial or executive capacity for the purposes of this immigrant visa classification. The

AAO pointed to its original decision, which listed numerous factors that are considered when making a determination as to whether the petitioner meets the evidentiary burden of establishing that the beneficiary would be employed in a qualifying managerial or executive capacity as those terms are defined at section 101(a)(44) of the Act.

On second motion, the petitioner stated that an error was committed in translating the beneficiary's position title with regard to his position abroad, claiming that the beneficiary was employed abroad in the position of technical director rather than the position of technical manager. The petitioner's prior counsel made the distinction between the two position titles, claiming that the former position of technical director was indicative of an executive position, while the latter position is indicative of a first-line manager. Counsel asked the AAO to consider evidence pertaining to the foreign entity, including the beneficiary's job description and job descriptions of the beneficiary's subordinate and superior, as well as documents pertaining to the beneficiary's U.S. employment, including the U.S. entity's organizational chart and documents of business transactions.

On current motion, the petitioner claims that the petitioner repeatedly submitted the same evidence to support its nonimmigrant L-1A petitions, which were filed on behalf of the same individual, and points out that the previously filed petitions had been approved. Given such approvals, the petitioner questions the validity of the director's denial and the subsequent dismissals of the appeal and two successive motions, claiming that U.S. Citizenship and Immigration Services (USCIS) has either failed to properly review or simply does not understand the petitioner's submissions with regard to the beneficiary's employment. The petitioner further suggests that USCIS should interview in person anyone it deems necessary and grant the petitioner the opportunity for an in-person oral hearing during which the petitioner can provide an explanation of its eligibility and fully understand the grounds for the prior adverse findings so that the petitioner can correct any deficiencies.

As indicated in the AAO's prior decisions, 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.<sup>1</sup>

In the present matter, the petitioner's only submission is the supporting statement in which the petitioner explains the desired outcome of having filed the instant motion. The petitioner has not, however, provided any evidence, new or otherwise, in support of the motion.

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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 NEW COLLEGE DICTIONARY 753 (3rd Ed., 2008) (emphasis in original).

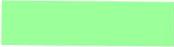
The AAO has issued three prior decisions determining that the petitioner failed to provide adequate evidence to support a favorable finding. It is apparent that the petitioner seeks to overcome the adverse findings on motion. However, as indicated in the AAO's prior decision, a motion to reopen is not the proper vehicle with which to address the original findings of a service center. The petitioner was given an opportunity on appeal to overcome the director's findings. The primary focus of a motion to reopen is any evidence that was previously unavailable, which, if made available at the time of the appeal, could have resulted in withdrawal of one, or more than one, of the director's adverse findings. Any documents that were previously available or were created subsequent to the adverse decision for the purpose of overcoming prior adverse findings do not meet the criteria for a motion to reopen. The petitioner has not provided evidence to meet these requirements. Therefore, the motion 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.

Next, in support of the motion to reconsider, the petitioner must state the reasons for reconsideration and support such motion by citing pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief or statements that were previously presented on appeal (or in support of a prior motion) and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

In this case, the petitioner failed to support this motion with any precedent decisions or other comparable evidence to establish that the decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will therefore be dismissed.

Lastly, with regard to the petitioner's apparent request for an oral argument, the regulations provide that the affected party must explain in writing why oral argument is necessary. *See* 8 C.F.R. § 103.3(b). Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, the petitioner identified no unique factors or issues of law to be resolved. Although the petitioner vaguely indicated that USCIS failed to review previously submitted evidence, the record shows that the petitioner's properly submitted evidence had been reviewed on more than one occasion and the AAO's prior decision not to review evidence was thoroughly explained and was based on the petitioner's earlier failure to



timely submitted requested documentation. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the petitioner's request for oral argument is denied.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.