

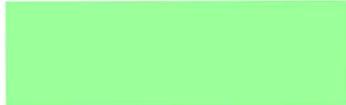


U.S. Citizenship
and Immigration
Services

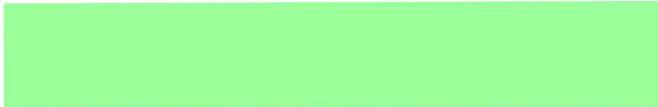
(b)(6)



DATE: **SEP 18 2013** OFFICE: TEXAS SERVICE CENTER



IN RE:



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 Director, Texas Service Center, denied the preference visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on May 23, 2013, the AAO summarily dismissed the appeal. The matter is now before the AAO on a motion to reopen, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner is a real estate investment company organized in the State of Texas. It seeks to employ the beneficiary as its president and chief executive officer. 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 August 1, 2009, the director denied the petition, concluding that the petitioner had not established it would employ the beneficiary in a primarily managerial or executive capacity. Specifically, the director noted that the organizational chart indicates that the beneficiary supervises "5 employees including contractors and subcontractors." The director found that "[g]iven the limited staffing level of [the company] ... it can only be concluded that the bulk or primary part of the beneficiary's proposed job assignment in the United States will be outside the scope of the 'executive' or 'managerial' capacities as defined."

On September 1, 2009, counsel for the petitioner filed an appeal, contending that the director erred in denying the petition based on the small size of the company. Counsel further asserted that the beneficiary manages and directs not only staff, but the company's central function, and that the majority of his duties fall within the statutory definition of a "manager" or "executive." On June 10, 2013, the AAO dismissed the petitioner's appeal on two alternative grounds, concluding that: (1) the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial capacity, and (2) the record is insufficient to establish that the beneficiary was employed abroad in an executive or managerial capacity, as required by the statute. The AAO thoroughly addressed counsel's objections to the denial of the petition. The AAO found that the petitioner did not provide any substantive details regarding the beneficiary's actual duties or the amount of time he allocates to specific duties, such that it could be concluded that he performs primarily qualifying tasks. The AAO further found that the petitioner had not established that its regular staff included anyone other than the beneficiary, and failed to provide evidence of payments to its claimed contractors; thus, it remained unclear who, if anyone, would be available to relieve the beneficiary from performing non-managerial tasks associated with the business's day-to-day operations, such as sales, marketing, bookkeeping, research, invoicing, licensing, and other administrative and operational functions.

The petitioner subsequently filed the instant motion to reopen the AAO's decision of June 10, 2013. On motion, the petitioner submits a letter in which it reiterates that the beneficiary will be employed in a qualifying executive capacity.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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.

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."

On motion, the petitioner submits two letters bearing the beneficiary's signature, reiterating that the beneficiary will be employed in an executive capacity. Both letters contain vague references to the beneficiary's executive position at the U.S. company, however, the information presented does not provide any new facts and is not supported by any documentary evidence.

The AAO's decision clearly indicated that the petitioner failed to provide sufficient information to demonstrate that the beneficiary's position and duties at the U.S. company qualify him as an executive or as a manager. Specifically, as noted above, the AAO found that the petitioner did not provide any substantive details regarding the beneficiary's actual duties or the amount of time he allocates to specific duties, such that it could be concluded that he performs primarily qualifying tasks. This failure of documentation is important because several of the beneficiary's assigned tasks do not fall directly under traditional managerial or executive duties as defined in the statute. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial or executive in nature, and what proportion are actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The AAO further found that the petitioner did not establish that it employs staff to perform several of the duties claimed to be delegated to staff by the beneficiary. The petitioner has not addressed this issue on motion. When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

The instant motion consists solely of the petitioner's assertions that the beneficiary is an executive and explains the hardships his family would suffer if this visa petition were not approved. The petitioner has not presented any new evidence relevant to the AAO's decision to dismiss the appeal. Furthermore, in its decision, the AAO also found that the record was insufficient to establish that the beneficiary was employed abroad in an executive or managerial capacity, as required by the statute. On motion, the petitioner ignores this portion of the AAO's decision and does not address the beneficiary's position or duties at the foreign entity. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

The purpose of a motion to reopen 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. As such, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of the AAO's decision issued on June 10, 2013. The petitioner has not met this burden.

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.

Finally, it should be noted for the record that, unless USCIS directs otherwise, the filing of a motion does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is dismissed.