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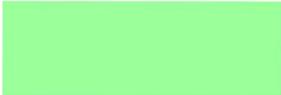
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

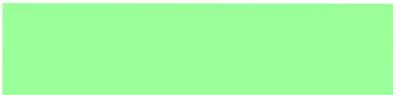
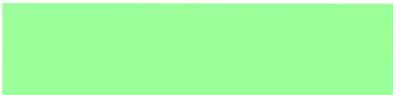


U.S. Citizenship
and Immigration
Services



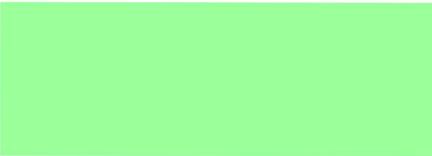
DATE: DEC 04 2014 OFFICE: TEXAS SERVICE CENTER

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)

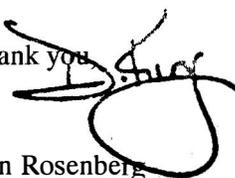
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, Texas Service Center.¹ The petitioner subsequently filed a motion to reopen and reconsider, which the director dismissed, finding that the petitioner failed to meet the requirements of either motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its general 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.

In a decision dated January 4, 2013, the director denied the petition pursuant to 8 C.F.R. § 103.2(b)(13)(i), which states the following:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny *by the required date*, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

(Emphasis added.) Specifically, the director deemed the petition abandoned based on the petitioner's failure to provide a timely response to the notice of intent to deny (NOID) within the allowed time period. The record shows that the director issued a NOID on September 21, 2012 and allowed the petitioner 33 days in which to provide a response. The record further shows that the petitioner provided a response, which was received on November 23, 2012, or 63 days after the NOID was issued.

In response to the director's January 4, 2013 denial, the petitioner filed a timely motion to reopen and reconsider, which was received on February 1, 2013. In support of the motion, the petitioner submitted a brief in which she claimed that an unexpected illness in the family resulted in the petitioner's untimely response to the director's NOID. Counsel restates portions of 8 C.F.R. § 103.5(a)(1)(i), which discusses specific circumstances under which U.S. Citizenship and Immigration Services (USCIS) may accept the filing of an untimely motion to reopen. Despite counsel's attempts to apply this provision to the circumstances in the matter at hand, the regulation cited by counsel is not applicable to the petitioner's untimely submission of a NOID response. As the director duly pointed out in the May 7, 2013 decision dismissing the petitioner's motion to reopen and reconsider, 8 C.F.R. § 103.5(a)(2) provides only three specific circumstances under which a motion to reopen may be granted subsequent to a denial that was based on abandonment. Specifically, 8 C.F.R. § 103.5(a)(2) states that a motion to reopen a denial that was based on abandonment must be submitted with evidence showing that the decision was erroneous based on any one of the following:

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

¹ The record shows that the petitioner filed a prior Form I-140 petition (receipt no. [REDACTED]), which was denied on January 25, 2010. The petitioner appealed that decision and the appeal was dismissed by the AAO on May 9, 2012.

- (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The director properly concluded that the facts presented in the matter at hand do not fit any of the regulatory criteria listed above. In addition, the regulation at 8 C.F.R. § 103.2(b)(8)(iv) expressly states that USCIS may not grant additional time in which to respond to a request for evidence or notice of intent to deny. Thus, the regulations expressly prohibit the director from granting the petitioner's request, regardless of the beneficiary's specific circumstances. Accordingly, the petitioner failed to establish that the director's decision warranted reopening and the motion was properly dismissed.

Next, we turn to the director's dismissal of the petitioner's motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states the following, in pertinent part, with regard to a motion to reconsider:

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.

Although the petitioner cited published case law, none pertained to the issue of an untimely filing of a NOID response; nor did the petitioner establish that the director erred in following the provisions of 8 C.F.R. § 103.2(b)(8)(iv), which, as indicated above, expressly prohibit the director from granting the petitioner's request for additional time in which to respond to an issued NOID.

Therefore, the director was also correct in dismissing the petitioner's motion to reopen and reconsider pursuant to 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.

On appeal, counsel restates prior claims that (1) the untimely filing of the NOID response was due to specific emergent circumstances, (2) "the petitioner exercised due diligence," and (3) the requested evidence was contained in other records associated with separate L-1 nonimmigrant and I-140 immigrant filings.

As previously noted, the regulations do not allow the director discretionary authority to consider the beneficiary's extenuating circumstances. In fact, given that the beneficiary is not a recognized party in this proceeding, circumstances that are specific to the beneficiary would be deemed irrelevant to the petitioner's request to provide a timely response to an issued NOID. *See* 8 C.F.R. § 103.2(a)(3). Furthermore, with regard to counsel's reference to supporting evidence in other records of proceeding, we note that each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. 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.

Accordingly, counsel's assertions on appeal are not persuasive and fail to acknowledge relevant applicable regulations that caused the director to deny the petitioner's Form I-140 on the basis of abandonment. The petitioner's submissions in support of the motion to reopen and reconsider were insufficient to meet motion requirements. Therefore, the director properly dismissed the petitioner's combined motion. As counsel has failed to provide evidence establishing that the director's decision to dismiss the petitioner's motion was erroneous, the petitioner has failed to overcome the grounds for the director's prior decision and the instant appeal must be dismissed.

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 appeal is dismissed.