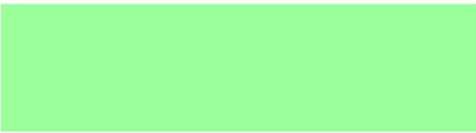




U.S. Citizenship  
and Immigration  
Services

(b)(1)



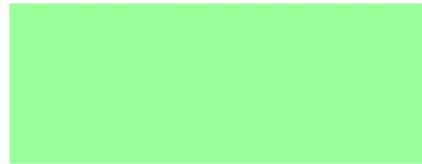
DATE: **DEC 30 2014** OFFICE: NEBRASKA SERVICE CENTER

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:



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, Nebraska Service Center, denied the preference visa petition. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed and the matter is now before the AAO on motion to reconsider. The motion will also be dismissed.

The petitioner is a Guam corporation engaged in the retail, wholesale, and service of electronics, computers, and appliances. It seeks to employ the beneficiary as its department 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. The director denied the petition, finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. We dismissed the appeal, concluding that that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Specifically, we examined the job duties that were assigned to the beneficiary as well as the foreign entity's organizational hierarchy and personnel structure within the department the beneficiary headed. We found that the petitioner failed to provide evidence fully addressing relevant factors regarding the beneficiary's role as head of the services department and the time he spent carrying out various non-qualifying tasks, which were inherent to his role.

On motion, counsel provides a brief in which he restates the previously provided job description and cites case law and other sources to support the assertion that the beneficiary was employed abroad in a qualifying capacity.

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.

A motion to reconsider contests the correctness of the original decision – in the case, our decision, dated March 15, 2014 – based on the previous factual record. 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). In other words, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal 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 the party must show how a change in law materially affects the prior decision. *Id.* at 60.

In the present matter, the case law cited in counsel's brief consists of federal and circuit court cases whose primary focus is on labor relations within the context of Title VII of the Civil Rights Act. None of the

decisions in the cited cases contemplated facts within the scope of immigration law or, more precisely, within the context of the terms managerial and executive capacity as defined in sections 101(a)(44)(A) and (B) of the Act, respectively. As such, counsel has not established how any of the cited cases are relevant to the facts presented in the instant matter, where we contemplate specific terms that are defined within a particular statutory scheme that is applied strictly within an immigration law context. In other words, it is unclear how the facts and court findings in the Civil Rights-based cases cited by counsel can be applied to the petitioner's circumstances, where the petitioner's goal is to establish that the beneficiary's assigned tasks during his employment abroad were primarily performed within a qualifying managerial or executive capacity.

Further, we note that our prior decision did not disregard relevant factors, such as the beneficiary's placement within the foreign entity's organization or his discretionary authority with regards to policies and personnel within the department he headed. Rather, we considered these factors within the scope of the job duties attributed to the beneficiary's position and the staffing structure of the department that the beneficiary headed. Our analysis was not based any single factor, but rather contemplated multiple relevant factors, which, when considered together, precluded us from finding that the beneficiary spent his time primarily carrying out tasks of a qualifying managerial or executive nature.

In addition, while counsel lists various job duties that are deemed managerial within the Department of Labor's Occupational Outlook Handbook ("OOH"), such information is not persuasive or relevant in the matter at hand, which, as indicated above, requires the application of statutory definitions within the context of immigration laws that are neither mentioned nor contemplated in the OOH. Further, counsel's reference to the Adjudicator's Field Manual, which is comprised of USCIS's internal personnel guidelines, would be given treatment that is similar to policy memoranda, which are deemed to "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

In summary, the legal precedent cited by counsel is not applicable to the facts in the matter at hand and thus they do not establish that our prior decision erroneously dismissed the petitioner's appeal. 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.

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.