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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:

OFFICE: TEXAS SERVICE CENTER

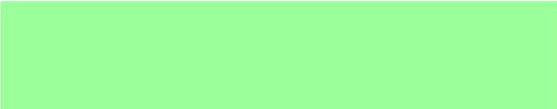
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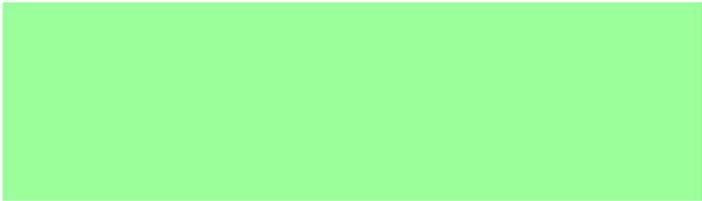
Petitioner:



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 preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was dismissed resulting in the petitioner's filing of two consecutive motions to reopen and reconsider. The AAO dismissed both motions and the matter is now before the AAO on a third motion to reopen and reconsider. The motion will be dismissed.

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

I. The Law

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.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); see also *Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

"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 prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. Compare *id.* and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not 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, 219 (BIA 1990, 1991) ("Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); see also *Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the moving party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. See 24 I&N Dec. at 60.

II. Procedural History

The initial adverse decision came in the form of the director's denial, dated August 18, 2009, which was based on two grounds. First, the director concluded that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his entry to the United States as a nonimmigrant to work for the petitioning employer. 8 C.F.R. § 204.5(j)(3)(i)(B). Second, the director also concluded that the petitioner failed to establish that it and the beneficiary would have an employer-employee relationship.

The petitioner subsequently filed an appeal disputing the director's findings. The AAO dismissed the appeal, rejecting the petitioner's reliance on the *Adjudicator's Field Manual* (AFM). The AAO focused instead on the beneficiary's employment abroad as the main basis for denial, concluding that the petitioner failed to provide adequate information describing the job duties the beneficiary performed during his former position with the foreign entity. The AAO declined to address the issue that dealt with the common law definition of "employee," concluding that there was no need to address the common law issue when there was a clear statutory basis for dismissing the appeal.

The petitioner subsequently filed the first of three motions to reopen and reconsider in support of which counsel submitted a brief expressing his objections to the AAO's decision. Counsel addressed the issue of a qualifying relationship, overlooking the fact that neither the director nor the AAO made adverse findings regarding this issue. Counsel then proceeded to restate portions of the director's discussion regarding the common law definition of the term "employee," making references to regulations that pertain to the L-1 nonimmigrant petition for intracompany transferees.

The AAO dismissed the petitioner's motion, concluding that counsel did not introduce any new facts or evidence in support of a motion to reopen. With regard to the motion to reconsider, the AAO determined that the precedent case law that counsel cited in his supporting brief did not establish that the AAO's decision on appeal was based on an incorrect application of law or Service policy pursuant to 8 C.F.R. § 103.5(a)(3).

In support of the second motion to reopen and reconsider, counsel submitted another brief in which he again raised the issue of employer-employee relationship between the petitioner and the beneficiary and cited precedent case law that addresses only the common law issue. Counsel failed to address the beneficiary's employment abroad and instead asked the AAO to consider the foreign entity's balance sheet for 2012, the petitioner's quarterly tax returns and employer's reports for 2012 and 2013, the petitioner's federal tax return for 2011, and a federal tax return for [REDACTED] for 2012, all of which counsel deemed as new evidence.

The AAO dismissed the motion to reopen, finding that the petitioner provided documents that were irrelevant to the issue of the beneficiary qualifying employment abroad and pointed out that a number of the documents that were submitted were not previously unavailable and could have been submitted earlier in the proceeding. The AAO further determined that counsel failed to support the motion with any precedent decisions or other

comparable evidence to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. The AAO therefore dismissed the motion to reconsider.

In support of the current motion, the petitioner provides a statement from counsel, which is accompanied by the beneficiary's résumé, 2005 tax returns of the foreign entity's employees, four letters of recommendation from January 2004 from foreign business owners who had business dealings with the foreign entity, and one letter dated October 2, 2013 from a foreign business owner who praised the beneficiary for his contributions to the foreign entity's business, and an October 17, 2013 letter from the foreign entity's accountant stating that the beneficiary was responsible for providing the foreign entity's financial documents that were necessary for tax filings.

III. Discussion

Turning first to the motion to reopen, despite efforts to provide new evidence, the documents submitted in support of the petitioner's motion, particularly statements from 2004, cannot be deemed as new since they clearly predated the AAO's decisions and thus could have been submitted earlier in these proceedings.

Further, while the two statements from October 2013 could not have been previously submitted, the AAO cannot overlook the fact that both documents were clearly created for the specific purpose of addressing the AAO's adverse decision from September 25, 2013. Such evidence does not rise to a level that would change the outcome of this proceeding. *Matter of Coelho*, 20 I&N Dec. at 473. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

More importantly, the facts that were discussed in the newly created document are not new; rather, the new documents merely convey information that could have been put forth on appeal, given that the denial duly informed the petitioner that the record lacked sufficient information pertaining to the beneficiary's former employment abroad. It is a fundamental requirement that a motion to reopen state "new facts" that are to be considered in the reopened proceeding. 8 C.F.R. § 103.5(a)(2).

Accordingly, given that none of the newly submitted documents purport to convey new facts, the petitioner failed to meet the requirements for a motion to reopen, and the motion must therefore be dismissed.

Finally, turning to the motion to reconsider, while counsel submitted a brief citing to a previously issued AAO decision where the AAO placed emphasis on the need to review the "totality of circumstances," the decision cited is unpublished and thus does not fit the motion to reconsider requirements. Moreover, counsel fails to establish that the AAO failed to review the "totality of circumstances," given the AAO's comprehensive discussion of all relevant facts on appeal.

In light of the above findings, the motion to reopen and reconsider 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).

IV. Conclusion

“There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases.” *INS v. Abudu*, 485 U.S. 94, 107 (1988). Motions to reopen immigration cases are “plainly disfavor[ed].” *Id.*

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, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.