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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: **JAN 22 2014**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

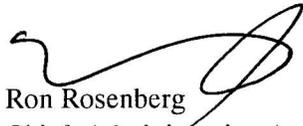
ON BEHALF OF PETITIONER:

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, Texas Service Center, denied the preference visa petition and dismissed the petitioner's subsequent motion to reopen and reconsider. The petitioner subsequently filed an appeal, which was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a Texas corporation that seeks to employ the beneficiary in the United States as its "director/president." The petitioner states that it is a subsidiary of the beneficiary's claimed foreign employer, [REDACTED] located in Pakistan. 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.

After issuing a notice of intent to deny and reviewing the petitioner's response, the director denied the petition on June 25, 2011 based on the following findings: (1) the petitioner failed to establish that the beneficiary was actually employed by the foreign entity for one year in the three years preceding his admission to the United States as a nonimmigrant; (2) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (3) the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Further, the director determined that the petitioner submitted falsified evidence in support of the petition and therefore denied the petition with a finding of fraud. Specifically, the director noted that there was inconsistent information regarding the identity of the beneficiary's last foreign employer which led to a conclusion that the beneficiary was not actually employed by the petitioner's parent company.

On July 27, 2011, the petitioner filed a motion to reopen and reconsider asserting that it did not provide factually inconsistent evidence regarding the beneficiary's employment abroad. The petitioner's motion consisted of a statement at Part 3 of the Form I-290B, Notice of Appeal or Motion (Rev. 11/01/12). The motion was not accompanied by a brief or any additional evidence.

In a decision dated June 25, 2012, the director dismissed the petitioner's motion concluding that the petitioner's statements in support of the motion did not meet regulatory requirements pertaining to the filing of a motion to reopen or reconsider at 8 C.F.R. §§ 103.5(a)(2) and (3). The director noted that the petitioner did not introduce any new, previously unavailable evidence in support of its motion to reopen, nor did it submit the required affidavits or other documentary evidence. The director further observed that the petitioner did not cite to any precedent case law, statute or regulation in support of an assertion that the decision was based on an incorrect application of law or USCIS policy, or establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner subsequently appealed the director's decision to the AAO. On appeal, counsel for the petitioner asserted that the initial findings made in the director's decision dated June 25, 2011 were based on false allegations. The petitioner provided an explanation for the apparent discrepancy in the identity of the beneficiary's foreign employer. The petitioner did not specifically address the director's June 25, 2012 motion

decision, the decision that was being appealed. Nor did the petitioner address the two remaining grounds for denial of the petition. The petitioner's appeal consisted of a statement at Part 3 of the Form I-290B.

The AAO summarily dismissed the petitioner's appeal pursuant to the regulations at 8 C.F.R. § 103.3(a)(1)(v), concluding that the petitioner did not identify an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal of the director's last decision. The AAO concluded that the director properly dismissed the motion to reopen and reconsider. The AAO also emphasized that the petitioner's appeal addressed only one of the three separate and independent grounds that served as the basis for the denial of the underlying petition.

The matter is now before the AAO on a motion to reopen and reconsider. On motion, counsel objects to the dictionary definition of "new" used in the AAO's decision and asserts "nowhere in the instructions, statutes or regulations is there language requiring that the evidence [submitted on motion] must be something that could have been discovered [or] presented before." Counsel submits dictionary definitions of the words "plain" and "new" in support of the motion. Counsel asserts that the petitioner has established by a preponderance of the evidence that all requirements for this the requested immigrant visa classification have been met.

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)(3) states:

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 [U.S. Citizenship and Immigration Services (USCIS)] 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.

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."

Upon review, the petitioner's current motion, which consists of counsel's statement on the Form I-290B and two dictionary definitions, does not meet the requirements of a motion to reopen or a motion to reconsider. The AAO summarily dismissed the petitioner's appeal based on the petitioner's failure to address the director's most recent decision. Further, the AAO emphasized that on motion before the director and subsequently on appeal, the petitioner had addressed only one of the three independent grounds for denial of the petition, and thus could not overcome the denial of the petition.

Contrary to counsel's assertions on appeal, the AAO did not summarily dismiss the appeal because "the evidence presented with the appeal [was not] considered since it does not meet the definition of 'new.'" Instead, the AAO

cited to the plain language dictionary definition in a footnote to help illuminate what might be considered a new fact.

Rather than dismissing the appeal based on the definition of "new," the AAO concluded that the petitioner's motion had failed on a more fundamental point as it was not supported by affidavits or evidence. The petitioner did not submit a brief or any additional evidence in support of the previous motion or subsequently on appeal. The regulations clearly require that a motion to reopen "be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel's reliance on dictionary definitions of "new" are not persuasive and do not provide a basis for the re-opening of the AAO's previous decision.

A motion for reconsideration must state the reasons for re-consideration and be supported by statute, regulations or pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy.

Even if the AAO were to grant the motion to reconsider, the petitioner has again failed to adequately address the findings in the director's original decision. The director denied the petition for the reasons stated above. In denying the petition, the director found that the petitioner and the beneficiary provided contradicting statements about the beneficiary's actual employment abroad and failed to corroborate its statements with documentation such as personnel records, pay stubs, or other evidence that would verify the beneficiary's employment at the qualifying foreign entity. The director further observed that the job description provided for the beneficiary's employment abroad was vague and failed to provide any specifics to identify his actual daily duties. The director also found that the job description provided for the beneficiary's position in the United States was similarly vague and failed to establish that he would be employed in a qualifying managerial or executive capacity.

Counsel has repeatedly addressed only the derogatory information presented by the director relating to the beneficiary's actual employment abroad with a qualifying foreign entity. Counsel rebuts the information cited in the original denial and indicates that the record reflects that the beneficiary was employed by the qualifying foreign entity for one continuous year within the three years preceding his entry to the United States. While the petitioner and counsel provide a brief explanation for the discrepancy, such explanation consists solely of unsupported statements on the Forms I-290B.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Again, the unsupported statements of counsel are not evidence. *See INS v. Phinpathya*, 464 U.S. at 188-89; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503. Counsel does not adequately address the two additional grounds for denial of the petition, nor does counsel present any additional evidence for consideration on motion.

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NON-PRECEDENT DECISION

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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 been met.

ORDER: The motion is dismissed.