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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: **JUN 11 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, ("the director") denied the preference visa petition. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO) where the appeal was dismissed. The matter later came before the AAO on a motion to reopen and reconsider. Notwithstanding our decision to grant the petitioner's motion, we affirmed the decision dismissing the appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The U.S. 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.

On August 17, 2012, the director denied the petition determining that the petitioner failed to meet statutory criteria, which require the petitioner to establish that: (1) the petitioner's foreign parent company employed the beneficiary in a managerial or executive capacity; and (2) the petitioner will employ the beneficiary in a managerial or executive capacity.

The petitioner filed an appeal, disputing both grounds for denial. With regard to the beneficiary's employment abroad, we found that the petitioner submitted irrelevant documents that lacked probative value because they failed to address the beneficiary's actual job duties while working in Venezuela for the foreign entity. We also noted that the petitioner made inconsistent references to the beneficiary's position title, referring to him at times as general manager and at other times as president with each position having its own set of job duties and distinct placement within the foreign entity's organizational hierarchy.

With regard to the beneficiary's proposed employment with the petitioning entity, we found that the petitioner did not provide evidence to establish that the beneficiary has a subordinate level of managerial employees to oversee or direct. We also observed that the job description the petitioner provided was overly vague and that the record lacked sufficient evidence to demonstrate that the petitioner hired outside contractors, such as freight forwarders and an accountant, or that it had a storage facility for inventory. We ultimately concluded that, at most, the beneficiary is acting as a first-line supervisor of non-professional, non-supervisory, and non-managerial employees. Alternatively, after considering the petitioner's reference to beneficiary as a function manager, we determined that the petitioner did not articulate any specific function that the beneficiary will manage or identify any employees who would perform the everyday routine operational tasks, including the duties of a first-line supervisor, such that the beneficiary would be relieved of the non-qualifying tasks and could focus primarily on perform managerial duties. Lastly, we rejected the petitioner's undue reliance on the previously approved L-1A nonimmigrant petition filed on the beneficiary's behalf, stating that in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

We subsequently granted the petitioner's motion and contemplated additional evidence that was submitted in support thereof. However, notwithstanding the decision to grant the petitioner's motion, we determined that the petitioner provided supporting evidence that lacked probative value and thus was insufficient to overcome the adverse findings we made in our prior decision, dated July 29, 2013.

We found that the petitioner provided a certification letter and a corresponding translation that did not meet the regulatory requirements specified at 8 C.F.R. § 103.2(b)(3) based on the lack of evidence identifying the translator or his or her competence to provide a complete and accurate translation. Next, we questioned the

relevance of the petitioner's submission of its tax return and evidence of the beneficiary's employment abroad, given that these documents fail to establish the beneficiary's job duties with either entity, the organizational hierarchy of either entity, and either entity's ability to relieve the beneficiary from having to focus his time primarily on the performance of non-qualifying operational tasks of the foreign or U.S. employer. Finally, we pointed out that the petitioner submitted a freight forwarding service agreement that predated the filing of the instant petition and no evidence on record actually established that the agreement was still in effect at the time of filing.

In support of the instant motion to reconsider, counsel contends that our findings were subjective with regard to the validity of the freight forwarding contract.

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 contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). Accordingly, the new evidence the petitioner currently submits in support of the motion to reconsider, including the document titled, "Certificate of Translator," executed on August 17, 2013, and the additional shipping receipts, will not be considered, as a motion to reconsider is not the proper vehicle for submitted new evidence.

In addition, counsel fails to establish that our assessment of the petitioner's freight forwarding agreement was arbitrary. Despite the agreement's indication that it would remain in effect indefinitely, it is reasonable to question whether such an agreement was in effect at the time of filing given the possibility that the agreement could easily have been terminated by either party. It was the petitioner's burden to establish that such agreement was in effect at the time of filing in light of the fact that only those facts and circumstances that are in effect when the petition is filed can be considered to determine eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Lastly, while counsel cites several published cases, which we have reviewed in considering the petitioner's motion to reconsider, counsel fails to establish, nor is there any indication that would lead us to conclude, that any of the cited cases, none of which are in any way related to immigration law or the filing of an I-140 petition, are relevant to the matter at hand. As such, there is no indication that the cited cases establish that our prior decision, dated March 4, 2014, misapplied the law or Service policy.

To merit reconsideration of the AAO's most recent decision, the petitioner must both: (1) state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and (2) specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believes that the AAO misapplied in its most recent decision. The AAO emphasizes that the requirements for a motion to reconsider are specific. 8 C.F.R. § 103.5(a)(3) requires a motion to reconsider to state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the prior decision was based on an incorrect application of law or Service policy. Such explanation and supporting evidence must be submitted on or with Form I-290B. *See* 8 C.F.R. §§ 103.5(a)(2) and (3).

We find that neither counsel's statement nor the additional documents that have been submitted in support of this motion meet the regulatory requirements for the filing of a motion to reconsider. 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.