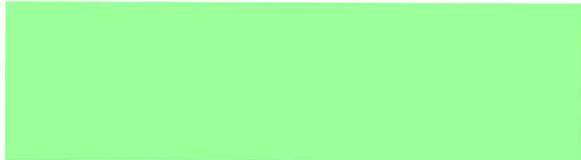


(b)(6)

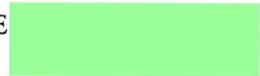


U.S. Citizenship
and Immigration
Services

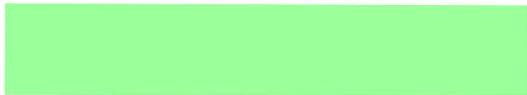


DATE: **SEP 17 2014** OFFICE: TEXAS SERVICE CENTER

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:

SELF-REPRESENTED

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", written over the "Thank you," text.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The petitioner appealed the matter to the Administrative Appeals Office (AAO), where the appeal was dismissed. The petitioner followed by filing a motion to reopen, which the AAO dismissed due to its untimely filing. The matter is now before the AAO on a motion to reopen and reconsider. This motion will also be dismissed.

The petitioner is a Texas corporation that seeks to employ the beneficiary as its marketing 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 based on two independent grounds of ineligibility: 1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 2) the petitioner failed to establish that it has been doing business in the United States.

On appeal, counsel disputed both grounds for denial, claiming that the beneficiary fits the statutory definition for both managerial and executive capacity and also contending that, other than experiencing a business slowdown in 2005, the petitioner never stopped doing business.

On December 13, 2010, we issued a decision dismissing the petitioner's appeal, concluding that counsel failed to clarify how, in the absence of a support staff, the beneficiary would be relieved from having to primarily perform non-qualifying tasks. We found that the petitioner failed to provide sufficient evidence to support the claim that the beneficiary would be employed in a qualifying managerial or executive capacity. With regard to the issue of the petitioner doing business in the United States, we found that counsel's claim directly contradicted the petitioner's Certificate of Filing, which was issued by the State of Texas for the purpose of reinstating the petitioner to active status as of November 26, 2007. Counsel's statement also contradicted the petitioner's own claim that after 2005 the U.S. entity's "business operation ceased due to lack of executive staff to direct and supervise the marketing, sales and overall functioning of the corporate activities in the United States."

In response to our dismissal of the appeal, the petitioner filed a motion to reopen, asserting that we failed to timely mail the decision we issued on December 13, 2010. The petitioner's assertion was premised on the claim that we erroneously sent the December 2010 decision in January 2014, approximately three years subsequent to the date stamped on the decision. We rejected the petitioner's claims as lacking credibility and found that the petitioner's supporting documents did not corroborate any of the petitioner's assertions. We explained that any decision originating from within the AAO, as was the decision dated December 13, 2010, would be sent to the petitioner in an envelope containing the AAO's return address at 20 Massachusetts Ave., N.W., MS 2090, Washington, DC 20529-2090. We further noted that the envelopes we use to send our decisions have clear windows through which the petitioner's address can be seen, thus eliminating the need to use separate address labels for petitioners. We pointed out that the envelope provided among the petitioner's supporting evidence originated from the office of the Texas Service Center and that the beneficiary's, rather than the petitioner's, name was affixed on a separate address label, thus indicating that the document(s) contained in the Texas Service Center's envelope addressed matters concerning the beneficiary rather than the petitioner.

In addition, we conducted an internal records check, which indicates that the only document that was mailed to the beneficiary in January 2014 by the Texas Service Center was in the form of an employment authorization card, while our own internal records clearly indicate that the decision in which we dismissed the petitioner's appeal was issued on December 13, 2010.

Accordingly, based on the petitioner's failure to put forth a credible claim supported by valid documents, we determined that there was no basis upon which to conclude that our decision dismissing the appeal on December 13, 2010 was sent to the petitioner for the first time by the Texas Service Center in January 2014. In light of our findings, we deemed the petitioner's motion as untimely filed and therefore dismissed that motion. *See* 8 C.F.R. § 103.5(a)(1)(i).

As a courtesy to the petitioner, we further explained that even if the prior motion had been timely filed, it would nevertheless have been dismissed based on the petitioner's failure to meet the motion requirements, which we will restate below.

On current motion, while the petitioner acknowledges our prior findings with regard to the first motion, the petitioner neither claims nor provides evidence to establish that such findings were based on an incorrect application of law or that they were factually erroneous. Rather, the petitioner reverts back to our original decision dismissing the appeal, seemingly overlooking the fact that we dismissed the petitioner's first motion based on its untimely filing.

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.

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.

As a preliminary matter, we note that the scope of review that applies to any matter on motion is narrowly limited to the basis for the prior adverse decision. In this matter, the subject matter of our June 12, 2014 decision was limited to the dismissal of the petitioner's motion to reopen based on its untimely filing. Although we provided a summary discussion of the issues that were addressed in our original decision, this was done as a courtesy to the petitioner in order to reiterate, for purposes of clarification, the grounds for the director's original adverse decision and our findings in regards thereto. Regardless of the dicta included in our prior decision, we were clear in stating that the ultimate basis for our dismissal of the motion was its untimely filing.

We further note that even if the petitioner's motion had been timely filed, it would nevertheless have been dismissed based on the petitioner's failure to meet the motion requirements.

In light of the above, the scope of this discussion will be limited to only consideration of any new facts or adequately documented reasons, supported by pertinent precedent decisions, establishing that our prior conclusion – that the petitioner's motion to reopen was untimely filed – was incorrect and that a withdrawal of the erroneous decision is warranted. However, after reviewing the petitioner's submission in support of the instant motion, we find that none of the elements addressed pertain to the issue of the untimely filing of the prior motion. Therefore, this 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 our 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.