



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 28 2015** 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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was summarily dismissed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is an advertising and marketing company that seeks to employ the beneficiary as its president. 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, concluding that the petitioner was ineligible based on the following findings: (1) the beneficiary was not employed abroad in a qualifying managerial or executive capacity; and (2) the beneficiary would not be employed in the United States in a qualifying managerial or executive capacity.

On appeal, the petitioner submitted a properly executed Form I-290B asserting that the denial contradicts the facts and law. Despite having marked Box B on the Form I-290B, indicating its intention to provide a brief and/or additional evidence within 30 days of filing the appeal, the petitioner did not submit a supporting brief and there is no evidence on record to show that any further supporting documents had been submitted. Therefore, we summarily dismissed the appeal pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v), which states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On motion, the petitioner does not acknowledge that we summarily dismissed its appeal. Rather, the petitioner submits a brief challenging the original grounds for the director's decision.

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.

As a threshold matter, we note that the review of any decision on motion is narrowly limited to the basis for the prior adverse finding. Here, the subject matter of our August 4, 2014 decision was limited to the summary dismissal of the petitioner's appeal.

In light of the above, the scope of this discussion will be limited by the subject matter that was addressed in our prior decision. In other words, we will consider only new facts and supporting evidence that establish that our prior decision to summarily dismiss the petitioner's appeal was incorrect and that a withdrawal of the erroneous decision is warranted. However, after reviewing the petitioner's brief on motion, we find that none of the elements addressed therein pertain to the issue of the summary dismissal. Rather, the motion is comprised entirely of statements that could and should have been made at the time of the appeal, as all statements specifically address the director's original grounds for denial. Therefore, we find that the petitioner does not state any new facts or provide supporting evidence to establish that our decision was erroneous and the petitioner's motion to reopen must be dismissed.

Next, we will address the petitioner's motion to reconsider. 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 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). 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). Further, 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 must show how a change in law materially affects the prior decision. *Id.* at 60.

In this case, the motion does not cite to any precedent decisions or other comparable evidence to establish that our decision to summarily dismiss the appeal was based on an incorrect application of law or USCIS policy. 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.