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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 08 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)

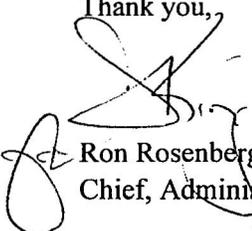
ON BEHALF OF PETITIONER: SELF-REPRESENTED

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,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a Florida limited liability company that seeks to employ the beneficiary as its general and operations 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 April 29, 2009, the director issued a decision denying the petition based on the following adverse conclusions: (1) the petitioner failed to establish that the beneficiary's proposed employment would be in a qualifying managerial or executive capacity, and (2) the petitioner failed to establish its ability to pay the beneficiary's proffered wage. After filing several motions with the service center and ultimately filing an appeal at the AAO, we conducted an appellate review pursuant to which we issued a decision, dated September 27, 2012, upholding the director's adverse conclusions and dismissing the appeal. Namely, with regard to the beneficiary's proposed employment in the United States, we rejected the petitioner's reliance on the *Occupational Outlook Handbook* (OOH), finding that the OOH provisions do not take into account the pertinent statutory and regulatory requirements cited in section 203(b)(1)(C) of the Act, and in 8 C.F.R. § 204.5(j), and that simply meeting general guidelines in the OOH is not sufficient. We also found that the petitioner failed to submit a specific statement explaining how the company functions on a daily basis, who performs the petitioner's non-qualifying tasks, and how the existing organizational structure is sufficient to relieve the beneficiary from having to perform primarily non-qualifying tasks. Next, we upheld the director's second adverse finding, concluding that the petitioner failed to provide sufficient evidence establishing that it had the ability to pay the beneficiary's proffered wage at the time the petition was filed.

The petitioner now files a combined motion to reopen and reconsider and a brief, contending that the motion was timely filed and that we erred in upholding the director's adverse conclusions with regard to the employment capacity of the beneficiary's proposed position and the petitioner's ability to pay the beneficiary's proffered wage.

Although we find that this motion was timely filed, the petitioner's supporting brief does not establish that the requirements for a motion to reopen or a motion to reconsider have been met.

I. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a United States Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As

stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service*," "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:¹

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or 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).

C. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] 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 [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

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* 8 C.F.R. § 103.5(a)(3) 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

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

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 affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

II. DISCUSSION AND ANALYSIS

The submission constituting the combined motion consists of the following: (1) an unsigned letter from the petitioner, dated April 25, 2014; (2) the Form I-290B; and (3) a ten-page brief submitted by the petitioner.

The supporting brief explains why the motion should be deemed timely and introduces the dictionary definitions for the terms "responsible," "coordinate," and "oversee" in an effort to address our prior findings that the petitioner failed to establish that the beneficiary was relieved from carrying out the non-qualifying tasks for which he was responsible and which he would coordinate and oversee. The petitioner also contends that we placed undue emphasis on the size of the petitioning organization and points out that the company's staffing size increased to four employees by the time the appeal was filed. The petitioner references ten job criteria cited on O*Net, an online source of occupational information, and restates portions of a previously provided job description to establish that the beneficiary fits the statutory criteria of executive capacity.

With regard to the issue of ability to pay, the petitioner cites an unpublished AAO decision to support its reliance on the foreign entity's monetary contribution in assisting the petitioner in meeting its financial obligations, including paying the beneficiary's salary.

A. Dismissal of the Motion to Reopen

In the present matter, the arguments posed by the petitioner on motion could have been provided either in support of the petition, in response to the director's request for evidence, or in support of the appeal. Therefore, the petitioner does not offer any new facts to warrant reopening this matter for further consideration.

As the petitioner has not met the burden described above, there is no basis upon which to grant the instant motion to reopen and the motion must therefore be dismissed.

B. Dismissal of the Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or 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. *See* 8 C.F.R. § 103.5(a)(3) (detailing the requirements of a motion to reconsider).

In the instant matter, the petitioner asserts that we erred in our interpretation of the petitioner's use of the OOH, asserting that the OOH was previously referenced for the purpose of emphasizing the meaning of the term "executive" and establishing that the petitioner is "a small and independent entity." The petitioner did not, however, clarify how such use of the OOH supports the petitioner's claim that the beneficiary's proposed employment fits the statutory definition of executive capacity or explain why we erred in finding that reliance on the OOH did not help the petitioner establish that it is eligible for the immigration benefit sought herein. Similarly, the petitioner failed to explain its use of O*Net or how the ten O*Net criteria are relevant to establishing that our decision was erroneous.

Further, restating previously provided information, as the petitioner has done in this matter, is ineffective in establishing that our prior decision was erroneous. Although the petitioner cited a prior AAO decision, the decision was unpublished and thus does not meet the requirements of a motion to reopen.

In light of the above, we find that the documents constituting this motion do not articulate how our decision on appeal misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the appeal was rendered. The petitioner has therefore not submitted any document that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be dismissed.

IV. CONCLUSION

The petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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 not been met. Accordingly, the combined motion will be dismissed, the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

ORDER: The combined motion is dismissed.