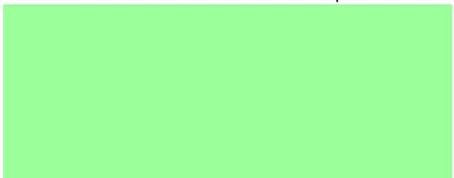


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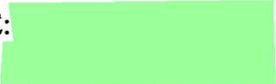


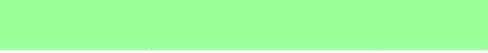
U.S. Citizenship
and Immigration
Services



DATE: **MAR 09 2013**

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director of the Texas Service Center revoked the previously approved preference visa petition. The director dismissed a subsequently filed motion to reopen. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reopen and/or motion to reconsider. The motion will be dismissed; the previous decisions will not be disturbed.

The petitioner is a Massachusetts corporation that seeks to employ the beneficiary as a 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 revoked the petition concluding that the petitioner did not submit any evidence in rebuttal to the United States Citizenship and Immigration Services' ("USCIS") Notice of Intent to Revoke ("NOIR") and abandoned the petition.

On June 14, 2010, the petitioner filed a Form I-290B and stated that it is filing an appeal. In a decision dated June 18, 2012, the AAO dismissed the appeal and affirmed the director's decision. On July 25, 2012, counsel for the petitioner filed a Form I-290B and identified it as a Motion to Reconsider and a Motion to Reopen. On motion, the petitioner submits a brief in support of the motion.

As a preliminary matter, the AAO notes that while an appeal and a motion are both remedial actions, the legal purpose of an appeal is entirely distinct from that of a motion to reopen/reconsider. The AAO reviews appeals on a *de novo* basis, allowing the petitioner to supplement the record with any evidence or documentation that the affected party feels may overcome the grounds for the underlying adverse decision. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). However, the AAO's review of a motion to reopen or a motion to reconsider is limited to evidence that fits the specific criteria discussed at 8 C.F.R. § 103.5(a)(2) and 8 C.F.R. § 103.5(a)(3), respectively. Submitting evidence that does not fit the regulatory criteria will not suffice.

The petitioner's assertions do not satisfy the requirements of a motion to reopen. The regulations at 8 C.F.R. 103.5(a)(2) states, in pertinent part: "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."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered *new* under 8 C.F.R. 103.5(a)(2). The evidence submitted was either previously available and could have been discovered or presented in the previous proceeding, or it post-dates the petition.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

The petitioner also states that it is filing a motion to reconsider. 8 C.F.R. § 103.5(a)(2) 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.

On motion, the petitioner does not submit any document that would meet the requirements of a motion to reconsider. A review of the record and the adverse decision indicates that the director and the AAO properly applied the statute and regulations to the petitioner's case.

On motion, the petitioner stated that the denial of the I-140 petition "was based on erroneous facts and contrary to the law." The petitioner explained that it filed the current petition [REDACTED] on May 27, 2008 and never received an approval notice. Since the petitioner claims it did not receive the approval notice, it filed a second petition on August 15, 2008 [REDACTED]. The petitioner further stated that it only received a Notice of Intent to Revoke for the second petition filed ([REDACTED]) [REDACTED] and not for the current petition. The petitioner goes on to state that both petitions were identical and it responded to the NOIR for the second file [REDACTED], "which was suitable to both files." The petitioner also contends that USCIS "should have voided the first file [the current petition] and not to attempt to deny petitioner's form I-140 on the basis that petitioner failed to respond to NOID, where the timely response to the RFE was suitable to both files."

Regarding the petitioner's claim that it never received the NOIR for the current petition, the record clearly shows that a NOIR was sent to the same address as the address used to file the current motion. An uncorroborated, self-serving denial of receipt is weak evidence, even if sworn. *Joshi v. Ashcroft*, 389 F.3d 732, 735-736 (7th Cir. 2004). Absent independent and objective evidence to support the petitioner's claim that it did not receive a copy of the director's notice, the AAO finds that the director's NOIR was properly issued by routine service. 8 C.F.R. § 103.8(a).

Furthermore, the petitioner contends that USCIS should have voided the current petition since it filed a second I-140 petition that was identical to the first. However, USCIS does not have the authority to "void" any petitions. As stated in the regulations, the petitioner must send a letter requesting to withdraw the I-140 petition to USCIS. Upon review of the file, the petitioner never sent a letter to withdraw the I-140 petition.

Moreover, the petitioner contends that its response to the NOIR for the second file [REDACTED] should have also been used for the current petition since both petitions are identical. In the current petition, the petitioner failed to respond specifically to the director's notice of intent to revoke, as it believed that the requested evidence was already included in the record for the second petition; however, each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It must be emphasized that each petition filing is a separate

proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). 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). If a director requests additional evidence that the petitioner may have submitted in conjunction with a separate immigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the record of the second immigrant proceeding is not combined with the record of the immigrant proceeding.

A review of the record and the adverse decision indicates that the director and the AAO properly applied the statute and regulations to the petitioner's case.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See* sec. 291 of the Act, 8 U.S.C. 1361; *see also* *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring).

Here, the submitted evidence does not meet the preponderance of the evidence standard. As noted in the director's decision and the AAO's decisions, the petitioner did not provide sufficient evidence to establish the petitioner meets the regulatory requirements to establish eligibility for the I-140 immigrant visa petition.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

The regulation at 8 CFR § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

(b)(6)

ORDER: The motion will be dismissed. The director's and AAO's decisions will not be disturbed. The petition is revoked.