

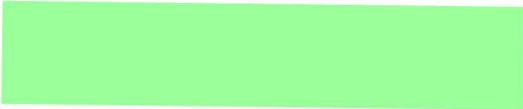
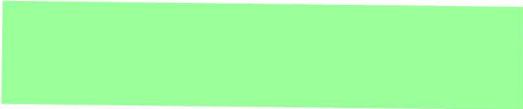


U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAY 15 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:

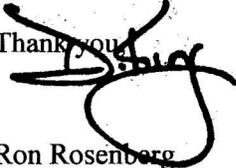
SELF-REPRESENTED

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

  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner claims to be doing business as a [REDACTED] LLC" with a staff of six employees and a gross annual income of \$940,779. 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.

### I. Procedural History

The director denied the petition, concluding that the petitioner failed to establish that it had been doing business and was therefore ineligible to be classified as a multinational executive or manager. The director also denied the visa petition with a finding of fraud.

The petitioner filed an appeal disputing the director's findings and asserting that the director failed to provide proper notice of derogatory information, which the director used as a basis for denial and a finding of fraud. In order to provide the petitioner the opportunity to rebut the derogatory information, the AAO issued a Notice of Derogatory Information (NDI), dated August 9, 2013.

On September 11, 2013, the AAO received the petitioner's response, which was considered prior to issuing a decision, dated October 29, 2013, dismissing the appeal. Specifically, we concluded that the petitioner provided insufficient information demonstrating its business activity and further found that the evidence the petitioner did provide was inconsistent and contained fabricated documentation memorializing the petitioner's alleged business relationship with [REDACTED]. Accordingly, we found that the petitioner failed to establish that it had been doing business for one year prior to filing the petition. Additionally, while we found that the petitioner submitted fabricated documentation, which rose to the level of willful material misrepresentation, such submission did not warrant a finding of fraud. Therefore the director's finding of fraud was deemed to have been entered in error. Lastly, we went beyond the director's decision in concluding that the petitioner failed to establish that it was ready and able to employ the beneficiary in a qualifying managerial or executive capacity and was therefore ineligible based on this additional ground.

On motion, the petitioner submits a supporting brief asserting that it made a *prima facie* case establishing eligibility and that the AAO failed to consider many of the supporting documents that were previously submitted. The petitioner further contends that the AAO's act of issuing of an NDI as a remedy for the director's error was illegal and that the AAO effectively denied the petitioner the opportunity to rebut by failing to provide the actual evidence that served as the basis for the adverse finding. Lastly, the petitioner disputes the AAO's rejection of the alleged investigative report the petitioner submitted in response to the NDI and reiterates the claim that the petitioner and the beneficiary were the victims of fraud, which was purportedly perpetrated upon them by employees whose low wages should not be relied upon as valid indicators of whether or not they committed fraud.

## II. Motion to Reopen

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 petitioner in the present matter does not state any new facts or provide evidence to support a motion to reopen. Rather, the petitioner provides photocopies of the AAO's decision dismissing the appeal, the NDI notice, and the petitioner's response to the NDI. As these documents were all part of the record prior to the filing of the instant motion, they cannot be deemed as new facts. Therefore, the petition failed to meet the requirements of a motion to reopen and the motion must therefore be dismissed.

## III. Motion to Reconsider

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 U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). 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 petitioner raises no new legal argument nor cites pertinent precedent case law to demonstrate that the AAO's decision was based on an incorrect application of law or USCIS policy. Contrary to argument three in the petitioner's supporting brief, the AAO is not required to address every piece of evidence offered by the petitioner, particularly where some of the evidence provided is deemed to lack credibility. In fact, even if the AAO were to have addressed each of the petitioner's submissions, any probative value those submissions may have had would have been greatly diminished by the petitioner's submission of false and unreliable documentation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Given the petitioner's offer of additional claims that are inconsistent with statements previously made, the petitioner failed to rebut the adverse findings and gave rise to further doubt the reliability of the other evidence and overall credibility of the petitioner's claimed eligibility.

Additionally, the petitioner's claim that it was illegal for the AAO to issue an NDI to remedy the director's failure to issue a second notice to inform the petitioner of derogatory evidence is without merit. The provisions of 8 C.F.R. § 103.2(b)(16)(i) allow the AAO to do precisely what it has done in the matter at hand, which is to issue a notice informing the petitioner of derogatory information of which the petitioner may not be aware and which USCIS plans to use as a basis for an adverse determination. Had the petitioner duly addressed and overcome the adverse information, the AAO could have then either sustained the appeal or remanded the matter back to the director for further consideration of any other issues that may have served as grounds for denying the petition. However, as evident from the adverse decision that the AAO ultimately issued, the petitioner did not overcome the findings discussed in the NDI. Therefore, the appeal did not warrant a sustain, nor was there any reason to remand the matter for any further discussion.

Moreover, the USCIS does not assume the burden of proving the validity of the adverse evidence that served as a basis for denial. Rather, upon presenting the petitioner with information of the adverse evidence, the petitioner maintains the burden of rebutting the adverse evidence in order to establish its eligibility for the immigration benefit sought herein. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). Contrary to the petitioner's contention, the burden of proof does not shift to the AAO and the AAO is under no obligation to provide the petitioner with copies of the adverse evidence that was discussed in the NDI so long as the petitioner is made aware of the existence of the adverse evidence. *See* 6 C.F.R. § 5.2 regarding instructions for filing a request to review the record pursuant to the effect of the Freedom of Information Act.

In whole, based on the arguments presented in the supporting brief, it is apparent that the petitioner seeks to readjudicate the entire petition by presenting arguments that were previously addressed in the AAO's decision dated October 29, 2013. The only case law cited in the petitioner's brief was case law that the AAO previously cited in its own decision in support of findings that resulted in the dismissal of the appeal. The petitioner did not establish how the previously cited case law could be used to determine that the AAO's decision was based on erroneous factual or legal conclusion. Moreover, the petitioner did not dispute the AAO's additional finding of ineligibility, which was based on the determination that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

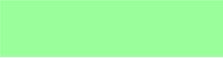
#### IV. Conclusion

In light of the above, the petitioner failed to meet the requirements of a motion to reopen and 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. § 13611361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be dismissed.

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*NON-PRECEDENT DECISION*

**ORDER:** The motion is dismissed.