**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**

(b)(6)

[redacted]

DATE: APR 0 1 2013 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 also be dismissed.

The petitioner is a Maryland corporation engaged in the business of international trade. It 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 failed to establish that the beneficiary would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal, rejecting prior counsel's reliance on the petitioner's previously approved nonimmigrant petition. The AAO provided a thorough analysis of the job description offered by prior counsel and found that counsel's statements lacked credible and detailed information about the beneficiary's actual daily job duties. The AAO also noted, beyond the decision of the director, that the petitioner failed to provide sufficient evidence to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) the petitioner has a qualifying relationship with the beneficiary's prior employer abroad.

On motion, the petitioner's new counsel asks the AAO to consider new evidence which he claims will establish that the beneficiary's proposed position with the U.S. entity is in a qualifying managerial or executive capacity. Counsel offers the foreign entity's trade license as a means of establishing that the work the beneficiary performed abroad was also in a qualifying managerial or executive capacity. Counsel neither disputes nor addresses the AAO's adverse finding with regard to the lack of evidence showing a qualifying relationship between the petitioner and the beneficiary's foreign employer. Therefore, the petitioner effectively concedes to the AAO's adverse finding on the issue of a qualifying relationship.

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.

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]

In the instant case, the petitioner submits numerous subcontracts for hiring labor, contracts for the performance of various home renovation services, bank statements, and tax returns. Although these documents reflect events that took place both before and after the filing of the petition, none are relevant in establishing that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Furthermore, these documents do not meet the specific requirements of a motion to reopen.

---

[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).

While some of the documents were technically unavailable at the time of filing, it is important to note that the unavailability was due to the fact that some documents had not yet been created because they reflected events that had not yet occurred. The AAO notes that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). With regard to the documents that reflected events that predated the filing of the petition, such documents were not unavailable and thus could have been submitted at any time prior to the AAO's last decision.

Regardless, the submitted documents are not relevant as they do not establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; or that (2) the petitioner had the ability to employ the beneficiary in a qualifying managerial or executive capacity at the time of filing. Therefore, the motion to reopen must be dismissed.

Moving on to the 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.

In the instant matter, counsel does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. 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.