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 initially approved by the Director, Texas Service Center. Upon further review, a Notice of Intent to Revoke (NOIR) was issued and the approval of the petition was ultimately revoked. 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 is a Texas corporation that seeks to employ the beneficiary in the United States 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 revoked the approval of the visa petition based on four independent grounds of ineligibility. Specifically, the director found the petitioner failed to establish: (1) that the beneficiary's proposed employment with the U.S. entity would be in a qualifying managerial or executive capacity; (2) that the beneficiary's employment abroad was within a qualifying managerial or executive capacity; (3) the existence of a qualifying relationship with the foreign entity; and (4) that the foreign company continues to operate as a business abroad.

On appeal, the AAO found that the petitioner failed to provide sufficient evidence to overcome the director's decision on any of the four independent grounds. Consequently, the AAO affirmed the director's findings and dismissed the appeal.

On June 29, 2012, the petitioner filed the instant motion to reopen and reconsider the AAO's dismissal of the petitioner's appeal. The petitioner's motion is comprised of counsel's brief and a copy of an affidavit from [redacted] that was executed in March 2010.

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]

The regulations at 8 C.F.R. § 103.5(a)(3) includes the following provisions for a 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 [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.

Upon review, the petitioner's submission does not meet the requirements of a motion to reopen or a motion to reconsider.

In support of this motion, counsel provides a copy of an affidavit notarized and attested to in March 2010 which she claims offers proof to dispute one of the director's grounds for revocation,

specifically, the director's finding that the beneficiary's foreign employer continued to do business in India. This affidavit cannot be considered new evidence. Further, even if counsel provided some explanation as to why this document was not or could not have been available previously, it is insufficient to overcome the director's finding on the issue to which it relates. In fact, according to the affidavit, the foreign entity closed its operations in 2008. In order to qualify as a multinational entity, the petitioner must establish that it and its affiliate or its subsidiary conducts business in two or more countries. The petitioner has not met the requirements for a motion to reopen.

Moreover, 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. Counsel complains of procedural issues including the lapse of time between the original petition approval and its ultimate revocation. She recounts the procedural history and the eligibility requirements for the requested immigrant visa classification, and she asserts that all necessary documents for approval were submitted and included in the record. However, counsel's assertions primarily consist of objections to the service center's decision to issue a notice of intent to revoke, rather than any specific objections to the four independent grounds of ineligibility that were discussed at length in the AAO's decision dated May 29, 2012, which is the decision for which the petitioner seeks reconsideration. Accordingly, counsel's assertions do not meet the requirements of a motion to reconsider.

In light of the above deficiencies, the AAO finds that the petitioner has failed to meet the requirements for a motion to reconsider. Accordingly the motion to reopen and reconsider 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.

The AAO notes that in support of the motion, counsel contends that "the Attorney General, through the Service has applied a higher standard while adjudicating the Petitioner's Company's case." Counsel cites *Jilin Pharmaceuticals USA, Inc. vs. Chertoff*, 447 F.3d 196 (3rd Cir. 2006) in her brief, a case which incorporates a discussion of the "good and sufficient cause" language and the Attorney General's (now USCIS) right or power to revoke a previously granted petition.

According to Section 205 of the Act, 8 U.S.C. § 1155, the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." In regards to a revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals stated:

> In *Matter of Estime* , . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). As the AAO concurred with the director's determination that the petition was in fact incorrectly approved based on the petitioner's failure to satisfy four separate eligibility requirements for the requested immigrant visa classification, the notice of intent to revoke and revocation decision were properly issued.

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.