U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 2 2014 OFFICE: TEXAS SERVICE CENTER

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)

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 Director, Texas Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) denied the petitioner's subsequent appeal on May 16, 2013. The matter is now before the AAO on a motion to reopen and a motion to reconsider, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed. [1]

The petitioner seeks 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 petitioner is a Florida corporation established in 2010 and engaged in the wholesale export of used clothing. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition on July 2, 2012, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity.

On May 16, 2013, the AAO dismissed the appeal affirming the director's adverse conclusions. In dismissing the appeal, the AAO observed that the petitioner failed to submit an adequate description of the beneficiary's proposed duties and noted numerous inconsistencies in the record with respect to the petitioner's staffing levels and organizational structure. In addition, the AAO determined that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer and denied the petition based on

On June 14, 2013 the petitioner filed a Form I-290B, Notice of Appeal or Motion. The petitioner checked box "B" on Part 2 of the form indicating its intent to file an appeal, and indicated that a brief would be submitted within 30 days. Nevertheless, in Part 3 of the same form, the petitioner states it is filing the Form I-290B "under 8 C.F.R. 103.5," the regulatory provisions applicable to motions to reopen and reconsider. The petitioner submitted a brief in support of the Form I-290B on July 15, 2013.

The petitioner submitted conflicting information on the Form I-290B by indicating that it was filing an appeal and by simultaneously referencing the regulatory provisions for the filing of a motion to reopen or reconsider. There is no statutory or regulatory provision that permits the petitioner to file more than one appeal before the AAO with regard to the same petition. *See* 8 C.F.R. § 103.3(a)(1)(ii). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools under § 214.3 are now the responsibility of Immigration and Customs Enforcement (ICE). The AAO does not exercise appellate jurisdiction over its own decisions. Accordingly, a second appeal is not properly within the AAO's jurisdiction.

Accordingly, based on the petitioner's statement at Part 3 of the Form I-290B, the AAO will consider this filing as a motion to reopen and motion to reconsider. The petitioner states on Form I-290B, Part 3 that "it's respectfully submitted that in USCIS decision dated 5/16/2013, it's based on incorrect interpretation of law, and case law; 8 CFR 214.2(l)." The petitioner did not file a brief or additional evidence with the Form I-290B. Rather, it submitted a brief and seven exhibits with additional documentation on July 15, 2013.

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[1] The record of proceeding contains a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by the petitioner. The designated attorney on the Form G-28 is currently on the list of suspended and expelled practitioners and suspended from the practice of law by the State of Florida. Therefore, the AAO will not recognize the attorney in this proceeding. *See* 8 C.F.R. §§ 1.1(f), 103.2(a)(3), 292.

The affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider, 8 C.F.R. § 103.5(a)(l)(i). If the adverse decision was served by mail, an additional three days are added to the proscribed period. 8 C.F.R. § 103.5(b). Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3).

In this matter, the petitioner did not adhere to these filing requirements for a motion by submitting its brief and evidence with the Form I-290B. There is no regulatory provision that grants the petitioner an additional 30 days to submit a brief and evidence in support of the motion. Accordingly, the brief and exhibits submitted on July 15, 2013 will not be reviewed in this proceeding.

The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant re-opening or reconsideration of the AAO's decision to dismiss the petitioner's previous appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

> 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 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.

This regulation is supplemented by the instructions on the Form I-290B, Notice of Appeal or Motion, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions.[2] With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

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

> [E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

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

In this matter, the petitioner's motion consists of a very brief statement on the Form I-290B. It has provided no facts or documentation to support reopening of the matter. For this reason the motion to reopen will be denied.

Additionally, the petitioner 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. The petitioner's assertion that the denial was "based on incorrect interpretation of law, and case law; 8 CFR 214.2(1)" is vague, provides no reasons for reconsideration and refers to an in applicable section of the regulations, given that the petitioner is seeking reconsideration of a case filed under section 203(b)(1)(c) of the Act and governed by the regulations at 8 C.F.R. § 204.5(j). For this reason, the motion to reconsider will be denied.

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 sustained that burden. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.