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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

JAN 30 2003

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)

IN BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with a notice of her intention to revoke the approval of the preference visa petition, and her reasons therefore. The director subsequently revoked the approval of the petition. The petitioner then filed an appeal before the Associate Commissioner for Examinations. The appeal was summarily dismissed. The petitioner has since filed a motion to reconsider the director's revocation. The motion will be dismissed.

The petitioner is an Arizona corporation that seeks to employ the beneficiary as its general manager. Accordingly, the corporation has petitioned to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C). The director approved the immigrant petition on January 7, 1998.

Based on information discovered during an interview at the Phoenix District Office regarding the beneficiary's Application to Register Permanent Residence, Form I-485, the director issued a notice of intent to revoke the approval on March 15, 2000. The director determined that the beneficiary has not been employed in a managerial or executive capacity or that he was working for the petitioner at all during the three years prior to filing the Form I-140 petition. The director also determined that the petitioner has failed to establish that it has engaged in the regular, continuous, and systematic course of business. Based on these findings, the director revoked approval of the petition on June 16, 2000.

On appeal, counsel disputed the director's findings, stating that they were erroneous as a matter of law and unsupported by the evidence on record. However, counsel did not submit a brief and did not offer an explanation in support of her arguments. Consequently, the Associate Commissioner summarily dismissed the appeal pursuant to 8 C.F.R. 103.3(a)(1)(v).

On motion to reconsider, counsel explains some of the beneficiary's answers given at the above-referenced interview that took place at the Phoenix District Office. Counsel maintains her prior claim that the director's revocation of the I-140 petition was unwarranted and resulted from failure on the part of the Service to request the proper documentation.

However, 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 case, counsel's arguments are neither supported by documentary evidence, nor any precedent decisions which would establish that the decision was based on an incorrect application of law or Service policy. 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed, and the petition will be denied.

ORDER: The motion is dismissed.