

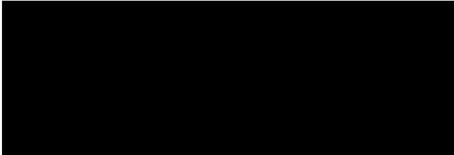
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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**B4**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, DC 20536



**JUN 24 2003**

File:

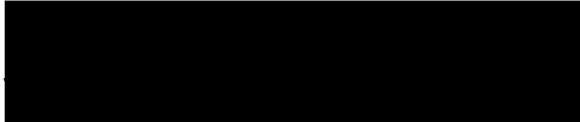
Office: VERMONT SERVICE CENTER

Date:

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:



**INSTRUCTIONS:**

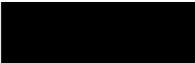
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office



**DISCUSSION:** The Director of the Vermont Service Center initially approved the employment-based preference visa petition. Upon further review, the director concluded that an error was made in approving the petition. The director, therefore, served the petitioner a Notice of Intent to Revoke, and he ultimately revoked the petition's approval on January 16, 2001. The petitioner appealed the director's decision, and the Administrative Appeals Office dismissed the appeal. The matter is again before the Administrative Appeals Office on a motion to reopen or reconsider. The motion will be dismissed. The petition's approval will be revoked.

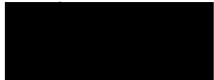
The petitioner seeks to employ the beneficiary as its president and, therefore, endeavors to classify him as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director revoked the approval of the petition on the ground that the proffered position is not in an executive or managerial capacity.

On appeal, counsel submitted additional evidence. The Administrative Appeals Office did not consider this evidence, however, because it should have been submitted in response to the director's Notice of Intent to Revoke. The Administrative Appeals Office also concluded that the beneficiary's job description was too vague and general to convey an understanding of the beneficiary's daily activities.

On motion, counsel submits the same evidence that he submitted on appeal. He asserts that, because neither the director nor the Administrative Appeals Office considered this evidence, it may be considered "new" for the purpose of a motion to reopen. Counsel states that the director did not consider this evidence in prior proceedings because he denied the petitioner additional time to respond to the Notice of Intent to Revoke. Counsel asserts that the director's failure to allow the petitioner additional time to submit evidence and the Administrative Appeals Office's failure to consider the evidence on appeal violate the petitioner's due process rights.

Counsel also asserts that the beneficiary works in an executive and a managerial capacity. He contends that the Administrative Appeals Office incorrectly concluded that the petitioner was seeking the services of the beneficiary as a "hybrid" executive/manager. Finally, counsel states: "[T]he beneficiary satisfies the definition of "specialized knowledge" that allows for approval of the petition." Counsel asserts that the Administrative Appeals Office's failure to address the beneficiary's specialized knowledge requires the Bureau to reconsider its decision.



Counsel's submission of additional evidence does not satisfy either the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 Bureau policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The Administrative Appeals Office, citing *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), declined to consider evidence submitted on appeal because it was evidence that the director had previously requested. On motion, counsel submits this same evidence and contends that it constitutes new facts because the Bureau has never considered this information. Counsel's statement, however, is not persuasive. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. See 8 C.F.R. § 3.2(c)(1). Here, no evidence in the motion contains new facts that were previously available. The documents submitted on motion are the same documents that the petitioner submitted on appeal. Accordingly, the Administrative Appeals Office is not swayed by counsel's claim that, because neither the director nor the Administrative Appeals Office considered the evidence in prior proceedings, this evidence is now "new" for the purpose of a motion to reopen.

Counsel also states that the Bureau should grant the motion to reopen because the petitioner was denied his due process rights by the director's failure to extend the time in which the petitioner was required to submit evidence to the Notice of Intent to Revoke. In its dismissal of the appeal, however, the Administrative Appeal Office addressed this issue, stating that the Bureau is under no obligation to allow a petitioner additional time to submit evidence. See 8 C.F.R. § 205.2(b). Therefore, this issue shall not be addressed further. The submitted evidence does not meet the requirements of a motion to reopen.

The evidence also fails to satisfy the requirements of a motion to reconsider. Although counsel states that the decision to revoke approval of the petition was an incorrect application of the law, he does not support his assertion by any pertinent precedent decisions, or establish that the director misinterpreted the evidence of record. Additionally, although counsel states that the Administrative Appeals Office must



reconsider its decision because it failed to address the beneficiary's specialized knowledge, counsel's assertion displays a misunderstanding of the differences between eligibility for nonimmigrant intracompany transferee (L-1) classification, and eligibility for an immigrant visa as a multinational manager or executive.

Section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L), states, in part, that the Bureau may grant nonimmigrant L-1 status to an individual who will work in a managerial, executive or specialized knowledge capacity. In contrast, the provisions of section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(C), are limited to managers and executives only. An individual's specialized knowledge of a company's practices or products does not entitle him to immigrant visa classification as a multinational manager or executive. Thus, there is no merit to counsel's claim that the Administrative Appeals Office's failure to address the beneficiary's specialized knowledge is a proper basis for reconsidering its previous decision.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The previous decision of the Administrative Appeals Office, dated June 24, 2002, is affirmed. The approval of the petition is revoked.