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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

File: EAC 00 119 52331 Office: VERMONT SERVICE CENTER Date: MAR 29 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, originally approved the nonimmigrant visa petition (L-1A). Based upon information obtained from the beneficiary during his visa interview at the United States Embassy in Moscow, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and ultimately revoked the approval. The petitioner appealed the revocation. The Administrative Appeals Office (AAO) dismissed the appeal. Subsequently, the petitioner submitted a motion to reopen and reconsider. The AAO granted the motion; however, upon review, the AAO affirmed its prior decision. This matter is again before the AAO on a second motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner exports computer parts and accessories to Russia and imports electric steel to the United States. The petitioner seeks to employ the beneficiary temporarily in the United States as its general manager. The director determined that the beneficiary had made conflicting and unreconciled statements. Consequently, the director concluded that the petitioner had not established that the beneficiary had been employed abroad for at least one year, within the three-year period preceding the filing date of the petition, in a primarily managerial or executive capacity.

On motion, counsel simply reiterates the petitioner's prior assertions. First, counsel asserts that the director improperly relied upon the consular report. Second, counsel claims that the beneficiary had been employed abroad for at least one year, within the three-year period preceding the filing date of the petition, in a primarily managerial or executive capacity.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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.

On motion, counsel submitted:

- A March 6, 2000 statement from the petitioner's vice president that now identifies the beneficiary as the U.S. entity's president. The March 6 statement describes the beneficiary's proposed U.S. duties.

- The petitioner's Internal Revenue Service (IRS) Form 1120 U.S. Corporation Income Tax Return for the tax year beginning May 7, 1998 and ending April 30, 1999.

The petitioner did not submit the vice president's statement in the form of an affidavit. Additionally, the statement adds no new information to prior descriptions of the beneficiary's proposed duties. Furthermore, the statement does not address the pertinent questions here: (1) whether the beneficiary had been employed abroad for at least one year, within the three-year period preceding the filing date of the petition, in a primarily managerial or executive capacity; and (2) whether the beneficiary presented conflicting information to the United States Embassy in Moscow about his prior employment. This information should have been available at the time the U.S. entity filed the petition. The vice president's statement, instead, paraphrases the statutory definitions of a manager or an executive and describes the beneficiary's proposed duties vaguely and nonspecifically. *See* sections 101(a)(44)(A), (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A), (B); *see also Fedin Bros. Co., Ltd. v. Sava,* 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd,* 905 F.2d 41 (2d. Cir. 1990); *see also*

Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Therefore, the statement cannot qualify as new evidence. The information on IRS Form 1120 was unavailable at the time of filing; nevertheless, the Form 1120 does not address the two pertinent questions stated above. Thus, the IRS Form 1120 cannot qualify as new evidence.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty,* 502 U.S. 314, 323 (1992) (citing *INS v. Abudu,* 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu,* 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Finally, it should be noted that, unless Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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. The regulation at 8 C.F.R. § 103.5(a)(4) states: "A motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.