U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D7

[redacted]

File: LIN 01 240 55796 Office: NEBRASKA SERVICE CENTER Date: SEP 0 2 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)

IN 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner appears to be an organization incorporated in the State of Michigan in the year 2000. It operates a goldsmith and jewelry enterprise. It seeks to temporarily employ the beneficiary as its jewelry and watch repair specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims that it is either a branch office or an affiliate of Alladin Guldsmed Al-Jader, located in Malmo, Sweden.

The director determined that the petitioner had not established that the beneficiary had been or would be employed in a capacity involving specialized knowledge. The AAO noted that Form I-290B, Notice of Appeal, had been filed and that counsel had indicated he would be sending a brief and/or evidence to the AAO within 30 days. However, upon review of the record, the AAO determined that no brief had been filed, necessitating the summary dismissal of the matter.

On motion, counsel for the petitioner asserts that material in support of the appeal had been repeatedly submitted to the Nebraska Service Center and the AAO, but apparently had not been included in the petitioner's record of proceeding.

The Form I-290B Notice of Appeal was filed on January 9, 2002. The statement on the appeal form reads:

> The petitioner will submit evidence demonstrating that the beneficiary possess[es] advanced skills in chronometer and watch repair that quailfy [sic] him as one possessing specialized knowledge skills.

The record also contains a letter dated February 6, 2002 and date stamped received by the AAO on February 12, 2002. In the letter counsel asserts that the director applied an improper standard when adjudicating the L-1B petition. Counsel cites a memorandum from a Nebraska Service Center supervisory center adjudications officer dated January 27, 2002 in support of his assertion. Counsel also disagrees with the director's statement that watch repairer skills can be learned on the job and asserts that this determination is irrelevant to the determination that the beneficiary possesses the specialized knowledge required to perform the job duties as a watch repairer for the petitioner. Finally, counsel asserts that the evidence submitted showing that the beneficiary had eight years of experience is sufficient to establish that the beneficiary's knowledge is advanced in nature by virtue of time and practical employment experience.

In addition, the record contains correspondence dated February 25, 2002 indicating that counsel was submitting the February 6, 2002 letter as a statement in support of this matter. The record also contains a May 6, 2002 letter wherein counsel enclosed previous correspondence, including the February 6, 2002 statement, as well as other attachments demonstrating counsel's difficulty in having the record of proceeding forwarded to the AAO.

The regulation at 8 C.F.R. section 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."

In this matter, counsel has not provided new facts and has not supported his assertion that the AAO did not receive the February 6, 2002 statement on appeal with affidavits or other documentary evidence. A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel's letter on motion is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does the letter contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Moreover, based on the plain meaning of "new," a new fact is evidence that was not available and could not have been discovered or presented in the previous proceeding. In this matter, although the AAO did not specifically reference the February 6, 2002 statement in its summary dismissal, the record of proceeding indicates that the letter containing counsel's assertions was before the AAO prior to its February 28, 2003 decision; thus the February 6, 2002 statement is not new.

However, even if the February 6, 2002 document, the only document submitted in support of the petitioner's appeal, had been specifically referenced in the AAO's February 28, 2003 decision, the AAO observes that counsel's statement did not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal; thus the AAO's summary dismissal was proper. Counsel's reference to a memorandum from a service center supervisory adjudications officer is irrelevant to this matter and not binding on the AAO. The remainder of the February 6, 2002 statement is simply an indication that counsel disagrees with the director's decision and is not supported by evidence establishing that the director's decision was erroneous. Counsel should note that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506 (BIA 1980).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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. 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.