

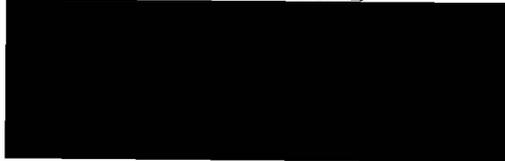
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



File: EAC 02 198 52764 Office: VERMONT SERVICE CENTER Date: NOV 08 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: On February 5, 2003, the Director of the Vermont Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on June 14, 2005, the AAO dismissed the appeal. On July 12, 2005, purported counsel to the petitioner filed a Form I-290B attempting to appeal the AAO's decision to the AAO. As the regulations do not provide for an appeal of an AAO decision, the second appeal will be treated as a motion to reopen and reconsider the matter in accordance with 8 C.F.R. § 103.5. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

The petitioner is a New Jersey corporation allegedly engaged in business as a wholesaler and dealer of automobile parts. The petitioner seeks to employ the beneficiary as its vice president to open a new office in the United States as an L-1A 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 director denied the petition after concluding that the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity within one year. The AAO subsequently dismissed the appeal.

Citizenship and Immigration Services (CIS) regulations specifically limit the filing of a motion by an attorney or representative authorized pursuant to 8 C.F.R. § 292. In this matter, the claimed attorney/representative has not established that he or she is a licensed attorney or an accredited representative authorized to undertake the representation of the petitioner. *See* 8 C.F.R. § 292.1. In fact, the individual indicates on the Form G-28 that he or she is a member of the High Court of Maharashtra and Goa. Accordingly, the foreign attorney's appearance will not be recognized, and the motion filed by the unauthorized counsel in this matter must be dismissed for this reason. 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and 103.5(a)(4).

Moreover, on the Form I-290B, the foreign attorney states: "Being aggrieved by the denial decision, both in fact & law." The foreign attorney further states in a letter dated July 7, 2005 that a brief would be submitted to the AAO within 90 days. As of this date, the AAO has received nothing further and the record will be considered complete.¹

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

¹On October 12, 2006, the AAO sent a fax to the foreign attorney. The fax advised the foreign attorney that no evidence or brief had ever been received in this matter and requested that the foreign attorney submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, the AAO has received no response from the petitioner or the foreign attorney.

Upon review, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. §§ 103.5(a)(2) and (3).

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[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.²

The regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part, that "[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 [CIS] policy."

As noted above, only a single statement was submitted in support of the motion. As such, there is no evidence submitted on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. Likewise, the petitioner has not stated any reasons for reconsideration.

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 will be dismissed.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen 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. Title 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

As the motion did not meet the applicable requirements, it will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.

²The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).