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U.S. Citizenship
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File: LIN 04 034 50398 Office: NEBRASKA SERVICE CENTER Date:

NOV 30 2006
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IN RE: Petitioner:
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:

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: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to deny the petition. On August 8, 2005, purported counsel to the petitioner filed 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 filed this nonimmigrant visa petition seeking to employ the beneficiary as its sales consultant 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 petitioner is a limited liability company organized under the laws of the State of Colorado and is allegedly engaged in the business of selling ice and refrigeration plants.

On May 6, 2004, the director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary has been employed abroad in a primarily managerial or executive capacity for one year out of the three years preceding the filing of the petition; or (2) that the petitioner has a qualifying relationship with a foreign entity. On June 3, 2004, the petitioner filed an appeal. The AAO dismissed the appeal on July 7, 2005.

On August 8, 2005, purported counsel to the petitioner filed a motion to reopen and reconsider the matter in accordance with 8 C.F.R. § 103.5. In the Motion, counsel asserts that the petitioner believes that the evidence submitted was adequate and explains that translations of some of the authentic documents could not be obtained because the beneficiary was working overseas. Counsel further states that additional evidence would be submitted to the AAO upon the beneficiary's return to the United States and requests an additional 30 days to provide additional documentation. As of this date, the AAO has received nothing further and the record will be considered complete.

As a threshold issue, the Form G-28, Entry of Appearance as Attorney or Representative, dated May 20, 2004, was signed by an authorized representative of Penguin International Distributing, Inc., not by an authorized representative of the petitioner, Penguin International, LLC. Therefore, the attorney identified in the Form G-28 is counsel to a corporation not a party to this proceeding and is not authorized to act as counsel to the petitioner. The Motion that was submitted in response to the July 7, 2005 decision was signed and filed by the attorney identified in the above Form G-28.

Citizenship and Immigration Services (CIS) regulations require that motions be signed by the affected party or the attorney or representative of record. 8 C.F.R. § 103.5(a)(1)(iii)(A). Likewise, attorney and representative appearances are filed using Form G-28. See 8 C.F.R. §§ 292.4 and 299.1. Since the attorney identified in the attached Form G-28 is not authorized to act on behalf of the petitioner, counsel is not an authorized attorney or representative and the Motion must be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and 103.5(a)(4).

Moreover, the AAO will dismiss the motion to reopen and reconsider for failure to meet applicable requirements pursuant to 8 C.F.R. §§ 103.5(a)(2), (a)(3), and (a)(4).

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.¹

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, counsel submitted no evidence 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. While counsel stated that he intended to submit additional evidence and/or translations, counsel does not state what new facts will be provided and no new evidence has been submitted as of the date of this decision. Likewise, counsel has not stated any reasons for reconsideration other than a general statement that the petitioner believes that evidence in the record is sufficient. This is inadequate to meet the requirements of a motion to reconsider.

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 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.

ORDER: The motion is dismissed.

¹The 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).