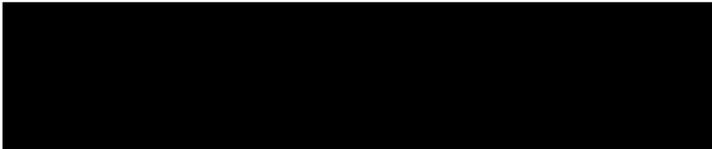


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File: EAC 00 275 51560 Office: VERMONT SERVICE CENTER Date: FEB 02 2007

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:



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 6, 2001, 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 October 15, 2002, the AAO dismissed the appeal. On November 14, 2002, the petitioner filed a motion to reopen the AAO's decision. On November 28, 2005, the AAO granted the motion to reopen and affirmed the previous decision of the AAO. On December 30, 2005, the petition filed a motion to reopen or reconsider the AAO's decision of November 28, 2005. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C) and (D), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

The petitioner states that it is engaged in the import and retail sale of jewelry. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its executive director 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, a Virginia corporation, claims to have a qualifying relationship with ██████████ of New Delhi, India.¹

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." Section 103.5(a)(1)(iii)(D) requires that motions be "[a]ddressed to the official having jurisdiction." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Moreover, the motion is addressed to the Vermont Service Center. Because the AAO is the office which made the latest decision in the proceeding, it properly has jurisdiction and not the Vermont Service Center. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, because the motion is not addressed to the AAO, it does not meet the filing requirement set forth in 8 C.F.R. 103.5(a)(1)(iii)(D). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) and (D), it must be dismissed for this reason.

Moreover, upon review, the AAO will also 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

¹It should be noted that, according to the corporate records of the Commonwealth of Virginia, the corporate status of the petitioner has been terminated. As the petitioner has ceased to be a legal entity in the United States, this calls into question its continued eligibility for the benefit sought.

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).

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 [Citizenship and Immigration Services (CIS)] policy."

In this matter, the petitioner presented no facts or 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. Likewise, the petitioner has not stated any reasons for reconsideration. While counsel states in the motion that the AAO "missed" the beneficiary's job description in its decision affirming its prior decision, the AAO quoted and considered a job description materially identical to the one which counsel asserts the AAO allegedly "missed." The AAO properly considered the underlying record and all of the evidence presented to it by counsel in the context of the previous appeal and motion to reopen.

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.