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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

57

DATE: FEB 07 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner has previously filed a total of three appeals and three motions with the Administrative Appeals Office (AAO). Most recently, the AAO dismissed the petitioner's motion to reopen and reconsider in a decision dated October 19, 2009. The matter is once again before the AAO on a motion to reopen and reconsider.

The petitioner seeks to extend the employment of the beneficiary as its vice president as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of New Jersey, claims to be engaged in the wholesale of general merchandise and states that it is a subsidiary of [redacted] The beneficiary was initially granted a one-year period of stay in the United States in L-1A status in order to open a new office, and the petitioner seeks to extend the beneficiary's stay.

The director denied the petition on February 24, 2004, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The AAO summarily dismissed the petitioner's appeal on February 1, 2006, and subsequently granted a motion to reopen in order to consider a timely filed appellate brief that had not been incorporated into the record prior to the AAO's initial decision. The AAO issued a 14-page decision affirming the denial of the petition and dismissal of the appeal on May 17, 2007. The petitioner subsequently filed an appeal on June 14, 2007. The AAO rejected the petitioner's second appeal as improperly filed on December 4, 2007, noting that the AAO does not exercise appellate jurisdiction over AAO decisions. In its decision, the AAO reviewed the petitioner's appeal and found that it did not meet the requirements for a motion to reopen or reconsider. A subsequent motion, filed on January 4, 2008, was reviewed by the AAO and dismissed in a decision dated July 7, 2008. The AAO rejected the petitioner's subsequent appeal on November 25, 2008, again noting that the AAO does not exercise appellate jurisdiction over AAO decisions. The AAO dismissed the petitioner's subsequent motion to reopen and reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a)(4) based on the petitioner's failure to satisfy applicable filing requirements.

The petitioner filed the instant motion to reopen and reconsider on November 16, 2009. The petitioner's motion consisted of the Form I-290B, Notice of Appeal or Motion, on which the petitioner briefly outlined six bases supporting the motion and indicated that a brief would follow in 90 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Accordingly, the AAO will not consider the brief submitted on January 10, 2010. Thus, the motion consists of counsel's statement on the Form I-290B, as follows:

(1) Initial decision of the Director denying the petition is bad both in fact and law. For details please refer the brief that follows;

(2) The said de novo review by AAO, a 14 page decision, merely states history, provisions of law and regulations and simply rubber stamps the subjective assessment

/ denial decision of the Director and as such contrary to precedent decisions and bad in law. For details, please see brief that follows;

(3) The definition of "new" evidence in the Motion to reopen and reconsider is wrongly construed. . . AND the evidence on record overlooked, ignored, not considered is once again ignored in violation of the accepted legal policy. For details please refer the brief that follows;

(4) Incorrect application of law. The adjudicating officer resorts to subjective interpretation and requirement not provided for and not envisaged by the state or the applicable regulation. For details please refer the brief that follows;

(5) Incorrect application of the service policy. The adjudicating officer resorts to subjective interpretation of the service policy to support his line of erroneous adverse assessment. For details please refer the brief that follows;

(6) Abuse of discretion . . . Case law referred. For details please refer the brief that follows.

The regulation at 8 C.F.R. § 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." The petitioner's previous motions did not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C), nor does the current motion. 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), it must also be dismissed for this reason.

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 evidence that was not available and could not have been discovered or presented in the previous proceeding.[1] The petitioner's brief statement on the Form I-290B contains no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2), nor is it properly supported by affidavits or documentary evidence as required by the regulations.

Furthermore, 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

[1] The 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).

This regulation is supplemented by the instructions on the Form I-290B, Notice of Appeal or Motion, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions.[2] With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

> **Motion to Reconsider:** The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

Therefore, to merit reconsideration of the AAO's most recent decision, the petitioner must both (1) specifically cite laws, regulations, precedent decisions, and/or binding U.S. Citizenship and Immigration Service (USCIS) policies that the petitioner believes that the AAO misapplied in deciding to dismiss the appeal; and (2) articulate how those standards cited on motion were so misapplied to the evidence before the AAO as to result in a dismissal that should not have been rendered.

Here, the petitioner makes vague references to policies, regulations and the statute without specifically citing any authorities, and makes broad assertions regarding abuses of discretion and improper assessments of the evidence without articulating how such standards were misapplied to the petitioner's evidence. Accordingly, the petitioner's statements on the Form I-290B are insufficient to support a motion to reconsider.

Further, the AAO notes that the petitioner has made the same claims in a prior motion and the AAO has addressed these claims in prior decisions. The petitioner appears to be requesting reconsideration of every decision made by the director and the AAO to date. The AAO emphasizes that the purpose of a motion is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reconsider is strictly limited to an examination of any purported misapplication of law of USCIS policy, which must be supported by precedent case law. The AAO previously conducted a *de novo* review of the entire record of proceeding when it reopened the matter to consider the petitioner's appellate brief in its May 17, 2007 decision. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per every petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated. The petitioner persists in filing motions and improperly filed appeals reiterating arguments that have been addressed and found to be insufficient in prior AAO decisions.

Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant the re-opening or reconsideration of the AAO's prior decisions. Again, the petitioner barely

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[2] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

> [E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

acknowledges the AAO's findings or its six previous decisions. As such, counsel's most recent assertion that the petitioner submitted sufficient evidence to establish eligibility for the benefit does not meet the requirements of a motion. The motion fails to establish that the decision to deny the petition and subsequent appeal and motions were incorrect based on the evidence of record at the time of the initial decision, as required by 8 C.F.R. § 103.5(a)(3).

Motions for the reopening or reconsideration 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. *See 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, 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.