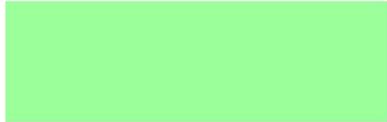




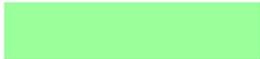
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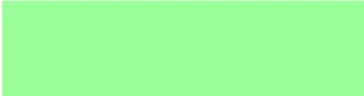


DATE: **JUN 05 2013**

Office: CALIFORNIA SERVICE CENTER

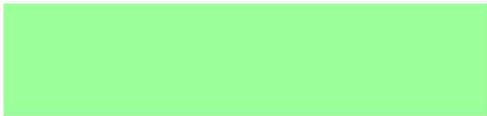
FILE: 

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)

ON BEHALF OF PETITIONER:



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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The petitioner filed an appeal with the Administrative Appeals Office (AAO), which the AAO dismissed. The petitioner filed the instant motion to reconsider. The AAO will dismiss the motion to reconsider.

The petitioner seeks to extend the employment of the beneficiary 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 Chicago corporation formed in 2010, is an international trading company for selling fitness equipment components and parts. It is a subsidiary of [REDACTED] located in [REDACTED] China. 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, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director concluded that the petitioner failed to establish that the beneficiary is supervising professional employees, and that the U.S. business has an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Furthermore, the director concluded that the petitioner failed to establish that the beneficiary qualifies as a functional manager.

The petitioner filed an appeal with the AAO. In dismissing the appeal, the AAO concluded that the petitioner failed to establish that the beneficiary's subordinates are managers, supervisors, or professionals. In particular, the AAO found that the petitioner failed to provide any evidence to illustrate that any of the subordinate positions require a bachelor's degree, and that any of the subordinate employees actually hold bachelor's degrees. The AAO also found that the petitioner failed to articulate how the beneficiary qualifies as a function manager, noting that the beneficiary's responsibility over the overall operations does not qualify her as a function manager.

The petitioner filed the instant motion to reconsider. On motion, counsel for the petitioner asserts that the beneficiary's subordinates are professionals. Counsel asserts that the AAO's dismissal is "not consistent with the precedents," such as *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988), *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968), and *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Counsel asserts that the warehouse manager position requires a bachelor's degree because the duties require the manager to make sure, through planning, coordinating, communicating and negotiating, that all the containers of the company's imported goods are loaded, unloaded, packed, and unpacked in an efficient way. Counsel asserts that the director and the AAO "completely misread the fact in this case and failed to recognize that the warehouse manager is not the person who engaged [in] physical labor himself but a manager who manages the function of the petitioner's store and warehouse department." Counsel asserts that the logistics position also requires a bachelor's degree because the petitioner's business transactions are international in scope and involve "various stages of preparing, decision making, following up and coordinating among different interested parties who have high stake of assurance to the shipping or delivering of the merchandise." Counsel disputes the AAO's conclusion that the sales manager is not managerial, executive, or professional in capacity, and asserts that he AAO "ignored the very fact that the petitioner is an international distributor of fitness products that need [sic] a particular sales personnel who possess special knowledge, learning and experience in petitioner's products. Counsel asserts

that the beneficiary is a function manager in that she “manages the logistics and marketing functions” of the petitioner.

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. . . .”

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.¹ 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) state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and (2) specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believes that the AAO misapplied in its most recent decision.

Here, the instant motion fails to meet the requirements for a motion to reconsider. Counsel fails to support the motion with appropriate statutes, regulations, or precedent decisions. On motion, counsel broadly asserts that the AAO’s decision is contrary to precedent decisions, and cites to *Matter of Sea*, 19 I&N Dec. 817 (Comm’r 1988), *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968), and *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966) as examples. However, other than citing the above precedent decisions, counsel has not explained how these cases support the instant motion, i.e., how the facts of the above precedent decisions are analogous or similar to the instant case.

The petitioner also failed to establish that the prior AAO decision was based on an incorrect application of law or Service policy

On motion, counsel asserts that the warehouse manager position requires a bachelor’s degree because the duties require the manager to make sure, through planning, coordinating, communicating and negotiating, that all the containers of the company’s imported goods are loaded, unloaded, packed, and unpacked in an efficient way. However, counsel’s assertions are unpersuasive and unsupported by any legal authority. Counsel has not explained how the duties of ensuring that all the containers of the company’s imported goods

¹ 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.

are loaded, unloaded, packed, and unpacked, including the generic duties of “planning, coordinating, communicating and negotiating,” require a bachelor’s degree as a minimum prerequisite for entry.

The AAO notes for the record that counsel’s assertion that the warehouse manager does not perform physical labor is inconsistent with the evidence in the record. On motion, counsel asserts that the director and the AAO “completely misread the fact in this case and failed to recognize that the warehouse manager is not the person who engaged [in] physical labor himself but a manager who manages the function of the petitioner’s store and warehouse department.” However, the petitioner’s description of the warehouse manager’s duties specifically included physical duties such as “releasing orders on time, loading and unloading orders, unpacking, packing or repacking the orders under customers [*sic*] request.” Moreover, counsel fails to identify who, if not the warehouse manager, performs the physical labor associated with the warehouse. The petitioner’s descriptions of its organizational structure reflect that the warehouse manager is the only employee who performs warehouse functions.

On motion, counsel asserts that the logistics position requires a bachelor’s degree because the petitioner’s business transactions are international in scope and involve “various stages of preparing, decision making, following up and coordinating among different interested parties who have high stake of assurance to the shipping or delivering of the merchandise.” Again, counsel’s assertions are unpersuasive and unsupported by any legal authority. Counsel has not explained how the international scope of the petitioner’s business, or the logistics position’s generic duties of “preparing, decision making, following up and coordinating among different interested parties,” would render a bachelor’s degree a minimum prerequisite for entry.

The AAO emphasizes that the term “profession” contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm’r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that “[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” Counsel has not provided any explanation to what specific field(s) of knowledge or learning would be required to perform the duties of a warehouse manager or logistics manager.²

On motion, counsel disputes the AAO’s conclusion that the sales manager is not managerial, executive, or professional in capacity. Counsel asserts that the sales manager “is in charge of communicating with customers in the U.S.” Counsel also asserts that the AAO “ignored the very fact that the petitioner is an international distributor of fitness products that need [*sic*] a particular sales personnel who possess special knowledge, learning and experience in petitioner’s products.” However, counsel fails to identify whether the sales manager is a managerial, executive, or professional position. Counsel also provides no explanation or citation to any legal authority to support its claims. The fact that the sales manager is in charge of communicating with customers and that the petitioner is an international distributor of fitness products does

² As previously noted by the AAO, counsel provides no documentary evidence to confirm that the beneficiary’s subordinates do indeed hold these degrees.

not establish that the sales manager qualifies as a manager, executive, or professional as defined by the statute and regulations.

Finally, counsel asserts that the beneficiary is a function manager in that she "manages the logistics and marketing functions" of the petitioner. Counsel's assertions are unpersuasive and unsupported by any legal authority. Counsel's assertions are also inconsistent with the evidence in the record. Prior to the instant motion, the petitioner has never claimed that the beneficiary specifically manages the logistics and marketing functions, and instead has consistently claimed that the beneficiary qualifies as a function manager due to the beneficiary's overall management of the company. On motion, a petitioner cannot offer a new position to the beneficiary or materially change the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Regardless, the petitioner's description of the beneficiary's job duties indicate that the beneficiary would spend 15% of her time "reviewing operation status with logistics manager," and listed no other duties specifically related to the management of marketing functions. In fact, the petitioner does not claim to employ a marketing manager or any employee to perform marketing duties. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

For the foregoing reasons, the instant motion does not meet the requirements of a motion to reconsider. The motion fails to establish that the AAO's decision dated December 31, 2012 dismissing the appeal was in error, 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 reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

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 motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). 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 be dismissed for this additional reason.

ORDER: The motion is dismissed.