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

(b)(6)

DATE: JUN 2 1 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now again before the AAO on motions to reopen and reconsider. The AAO will dismiss the motions.

The petitioner filed this nonimmigrant visa petition to employ the beneficiary, an L-1B intracompany transferee with specialized knowledge 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 semiconductor manufacturer, is the parent company of the beneficiary's foreign employer, located in Bangalore, India. The petitioner seeks to employ the beneficiary as a physical design engineer at its Chandler, Arizona facility for a period of approximately eight (8) months.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge. In denying the petition, the director observed that the record consisted primarily of the unsupported assertions of the petitioner, and that such assertions were insufficient to establish the beneficiary's eligibility.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserted that the petitioner clearly differentiated the beneficiary's knowledge from that of the remaining United States and Indian workforce employed by the petitioning organization and that its failure to submit certain supporting evidence was due to it being either unavailable or proprietary. Counsel maintained that the petitioner had submitted sufficient explanations of the beneficiary's expertise, training, and the critical need for his services in the United States necessary to qualify him as a specialized knowledge transferee.

The AAO dismissed the petitioner's appeal and affirmed the director's decision, finding that the petitioner had not established that the beneficiary held specialized knowledge or that he was or would be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). The AAO noted the petitioner's failure to identify and document a special or advanced body of knowledge that distinguished the beneficiary from that of other physical design engineers that were employed by the company. The AAO further pointed to the lack of information provided by the petitioner regarding the beneficiary's foreign employment and training, despite the specific requests for this evidence by the director in a Request for Evidence (RFE). In sum, the AAO concluded that the petitioner had provided little evidence in response to the director's RFE to corroborate the assertion that the beneficiary held a more advanced level of knowledge than other employees working in similar roles with the foreign employer.

The petitioner now files a motion to reopen and reconsider the AAO's decision.

The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, 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 decision to dismiss the petitioner's previous appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

> 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.

On motion, counsel offers an additional support letter from the petitioner's U.S. Immigration Operations Manager and requests that the AAO review this information and reconsider its dismissal. The petitioner explains that based on a conversation with United States Citizenship and Immigration Services (USCIS), it now better understands the evidence required to qualify the beneficiary and asserts that it submits this evidence in the support letter.

The letter now provides additional background on how the petitioner utilizes L-1B intracompany transferee petitions in order to stay competitive and readily transfer those with specific knowledge regarding its technology from foreign subsidiaries. Additionally, the petitioner provides further detail regarding the beneficiary's duties and the related technology, stressing their complexity. The petitioner notes that its failure to submit certificates related to the beneficiary's training was due to the fact that it does not issue such certificates, particularly with new proprietary concepts on which the beneficiary works. Lastly, the petitioner states that the beneficiary is one of only two physical design engineers within the company possessing specialized knowledge in designing top level DDR (double dynamic RAM) layouts required for full chip integration and asserts that the beneficiary is needed for a new project in the United States "to verify and integrate the [DDR] input and output interface during the tape-out stage for that product."

First, the AAO notes that the petitioner has not submitted any new evidence, but submits evidence it already had an opportunity to provide to the director.[1] In the RFE, the director specifically asked the petitioner to submit, *inter alia*: (1) an explanation of how the duties of the beneficiary aboard and those he will perform in the United States are different from those of other workers employed by the foreign employer or petitioner, including probative evidence to support said explanation; (2) an explanation of how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by others within the company or the beneficiary's particular field, including probative evidence to support said explanation.

However, as noted in the previous decision, the AAO found the petitioner's response to the director's RFE insufficient to establish the beneficiary as holding specialized knowledge or that he would act in a specialized knowledge role with the petitioner. For instance, the AAO stated that the petitioner's assertions "failed on an evidentiary basis," noting that the petitioner had "failed to identify and document any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other physical design engineers employed by the company." The AAO further noted that the petitioner's response included little information and supporting documentation regarding the beneficiary's employment with the foreign employer.

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[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 College Dictionary* 736 (2001)(emphasis in original).

Now, on motion, counsel asks that the AAO accept a more detailed explanation of the beneficiary's duties, their complexity, and unique nature. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on motion. Consequently, the additional explanation of the beneficiary's duties and their asserted specialized nature cannot be considered new evidence. Although the petitioner asserts it received guidance from USCIS regarding appropriate evidence to submit, the AAO is not aware of the petitioner's stated discussion with USCIS regarding evidentiary requirements and the petitioner has not provided supporting evidence to confirm that such a discussion took place. Regardless, if the petitioner indeed believes it better understands the evidentiary requirements necessary to qualify the beneficiary, there is nothing to bar the petitioner from filing a new petition with such evidence. Further, there is no indication that the information pertaining to the beneficiary's employment with the foreign employer was previously unavailable. Therefore, such evidence does not fit the requirements of a motion to reopen.

As such, the petitioner has offered no statements or evidence which could be considered "new" facts for the purposes of a motion to reopen. For the reasons discussed above, the instant motion does not meet the regulatory requirements for a motion to reopen. The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed." Therefore, the petitioner's motion to reopen will be dismissed.

The AAO will now analyze whether the instant motion meets the requirements for a motion to reconsider. 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.

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

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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.

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."

On motion, counsel does not offer a specific reason for reconsideration or cite pertinent law to support a motion to reconsider. As noted, counsel only states that the AAO review the additional support letter submitted by the petitioner and reconsider the matter. However, the support letter submitted by the petitioner does not specifically articulate any error on the part of the AAO, but only offers further explanation of the beneficiary's role with the foreign employer, his prospective role with the petitioner, and the specialized nature of both positions. The letter does not include any specific citations to statutes, regulations, or precedent decisions.

Upon review, the petitioner has not stated sufficient reasons for reconsideration or directed the AAO to any pertinent statute, regulation, or precedent decision that would establish that the AAO's decision was based on an incorrect application of law or USCIS policy. For this reason, the motion to reconsider will be dismissed.

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.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's 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. As discussed herein, the motions to reopen and reconsider will be dismissed.

ORDER: The motions to reopen and reconsider are dismissed.