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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 30 201[redacted] 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and on June 2, 2014, we summarily dismissed the appeal. The matter is now before us on a motion to reopen, in accordance with 8 C.F.R. § 103.5. We will dismiss the motion.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an 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 Florida corporation, states that it operates a commercial and residential refrigeration and [redacted] services business. The petitioner claims to be a subsidiary of [redacted] located in England. The petitioner seeks to employ the beneficiary as its president and managing director for a period of two years.

On October 23, 2013, the director denied the petition concluding that the petitioner failed to establish that the beneficiary has been and will be employed in a primarily managerial or executive capacity in the United States pursuant to 8 C.F.R. § 214.2(l)(14).

The petitioner subsequently filed an appeal and on June 2, 2014, we summarily dismissed the appeal concluding that the petitioner failed to specifically identify an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. We found that the director's decision included a thorough discussion of the significant evidentiary deficiencies present in the record and that the petitioner did not specifically object to the director's findings or acknowledge the deficiencies on appeal.

The petitioner subsequently filed the instant motion to reopen our decision dated June 2, 2014. The record is considered complete as presently constituted.

On motion, the petitioner states that, although USCIS did not receive its documents in support of the appeal, every effort was made to submit them timely. The petitioner states that the U.S. Postal Service (USPS) guaranteed delivery of its documents by December 18, 2013, 29 days after its submission of the Form I-290B, but instead delivered the documents on December 19, 2013. In support of the motion, the petitioner submits a copy of its receipt from the USPS, dated December 17, 2013, showing a scheduled delivery date of December 18, 2013 and a letter from USPS, dated June 30, 2014, stating that the documents were delivered on December 19, 2013 in [redacted] VT. The petitioner now submits a copy of the documents it claims were timely submitted in support of the 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.

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."

The instant motion is based on the petitioner's claim that it submitted a brief and additional evidence in support of the appeal in a timely manner.[1] However, we note that the delivery confirmation provided by USPS states that the documents were delivered to the USCIS office in , VT. The Form I-290B instructions clearly state that any brief and/or additional evidence, in support of an appeal, submitted after the initial filing of Form I-290B must be submitted directly our Washington, DC address. The Form I-290B instructions list our mailing address and also state that a request for additional time to submit a brief must be requested in writing directly our office within the same 30 day period, further emphasizing that the petitioner must contact us directly with any requests or correspondence relating to its pending appeal.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in part:

> Preparation and submission. Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission. . . .

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states, in part:

> Filing appeal. The affected party must submit an appeal on Form I-290B. . . . The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision.

Here, the petitioner claims that it submitted a brief and additional evidence to the incorrect USCIS office and, as a result, its appeal was summarily dismissed by our office. However, the petitioner has not submitted any evidence that the documentation submitted to the USCIS office in , VT on December 19, 2013 were in fact related to the instant petition appeal as the petitioner had various petitions or applications pending with USCIS during that time.

The regulation at 8 C.F.R. § 103.2(a)(1) and 103.3(a)(2)(i) state that form instructions are regulations and that an appeal must be filed in accordance with the form instructions. As the petitioner failed to follow the form instructions and claims to have submitted the supporting evidence to the wrong USCIS office, we cannot determine that the evidence submitted on motion was in fact the documentation timely submitted in support of the appeal.

The purpose of a motion to reopen is different from the purpose of an appeal. While we conduct a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. As such, our review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of our decision issued on June 2, 2014. The petitioner has not met this burden.

In addition, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a

[1] We further note that, although the petitioner is required to submit the supporting documents within 30 days of filing the appeal, we summarily dismissed the appeal approximately six months after the date the petitioner claims it submitted the supporting documents to USCIS.

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 this statement. 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.

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.

Finally, it should be noted for the record that, unless USCIS directs otherwise, the filing of a motion does not stay the execution of any decision in a case or extend a previously set departure date. *See* 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is dismissed.