



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-G-C-USA, LLC

DATE: OCT. 19, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a company engaged in golf publications and property investments, seeks to employ the Beneficiary as its president and chief executive officer under the multinational executive or manager immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. We dismissed the Petitioner's appeal of that decision. The matter is now before us on a motion to reopen. The motion will be denied.

The Director denied this petition, concluding that the Petitioner did not establish: (1) that in the three years preceding the Beneficiary's entry as a nonimmigrant, the Beneficiary was employed for at least one year in a managerial or executive capacity with a qualifying organization; (2) that the Beneficiary would be employed in the United States in a managerial or executive capacity; (3) that the Petitioner had been doing business for at least one year prior to filing this petition; and (4) that the Petitioner had the ability to pay the proffered wage at the time the petition was filed.

On appeal, we found that the petitioner did not overcome the deficiencies found by the Director on any of the four independent grounds for denial. Therefore, we affirmed the director's findings and dismissed the appeal.

I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this motion to reopen will be denied because the motion does not merit reopening.

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision."

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly

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completed and signed, and accompanied by the correct fee), but the Petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), “*Processing motions in proceedings before the Service*,” “[a] motion that does not meet applicable requirements shall be dismissed.”

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), “*Requirements for motion to reopen*,” states that “[a] motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence”

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states that motions to reopen “must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . was filed.”¹

Further, the new facts must possess such significance that, “if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case.” *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); see also *Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

II. FACTS AND ANALYSIS

The Petitioner’s motion to reopen consists of the Form I-290B, Notice of Appeal or Motion, a letter from the Petitioner and numerous documents including business documents, financial documents, foreign entity’s business invoices, tax documents, two issues of [REDACTED] magazine, and a notarized statement from the Petitioner’s tax preparer.

The Petitioner submitted a letter, dated January 26, 2015, signed by the Beneficiary as its general manager and owner. The Beneficiary asserts that he is serving in an executive capacity and that new evidence and facts relating to the company’s corporate structure and his place and function within that structure are included in the motion. The letter provides a diagram depicting the foreign entity, [REDACTED] as parent company for six subsidiaries wholly owned by the Beneficiary; the petitioning company is one of these subsidiaries. In this letter, the Beneficiary provides a brief description of each of these companies and a summary of the financial transactions between them. The Beneficiary explains that “[f]unds that were derived from sales for [REDACTED] clients were paid to the foreign Entity, [REDACTED] due to delays in the registration” of the Petitioning entity. The Beneficiary explains that the registration delay, in turn,

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, that “[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.”

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delayed the opening of a bank account for U.S. Petitioner leaving the Beneficiary no other choice than to accept customer payments into his personal bank account, after U.S. customers made payments to the foreign entity. In support of this explanation, the Petitioner provides foreign entity business invoices and asserts that the invoice total of \$253,580.82 sourced the Beneficiary's \$120,000 income.

With respect to the Petitioner's submission of tax-related information, we acknowledge the following additional evidence. On motion, the Petitioner submits its IRS Form 1120, U.S. Corporate Income Tax Return for 2012 stating that the company had gross receipts of \$253,287. The Beneficiary signed the document on January 17, 2015, and information identifying the Petitioner's tax preparer, [REDACTED] was entered on the form with a preparation date of January 16, 2015. In addition, the Petitioner provided the Beneficiary's IRS Form 1040 U.S. Individual Income Tax Return for 2012, signed by the Beneficiary on January 19, 2015, indicating that the Beneficiary earned \$120,000. [REDACTED] once again, is identified as tax preparer with a preparation date of July 1, 2014. In support of these tax returns, the Petitioner submitted a notarized letter, dated January 28, 2015, signed by [REDACTED] stating that the Beneficiary's income for 2012 was \$120,000. [REDACTED] explained in her letter that the previous Form 1040 for 2012 was amended because the tax preparer did not have sufficient information to complete the return. Further, [REDACTED] asserts that the petitioning company's income was derived from advertising fees.

We note that the Petitioner previously submitted the Beneficiary's 2012 Form 1040 in which he claimed to have earned \$15,000. The return included the Beneficiary's Schedule C, Profit or Loss from Business, listing his company's gross receipts of \$253,287 along with expenses for wages amounting to \$125,603, among other expenses. The Beneficiary signed this return on June 6, 2013 and tax preparer [REDACTED] signed the return on May 31, 2013. In addition, the Petitioner submitted an unaudited financial income statement for 2012 that was prepared and signed by [REDACTED] indicating that the Petitioner had \$253,286.77 in advertising income, paid total wages of \$125,602.90, and had a net income of \$32,607.47. Finally, the Petitioner's payroll summary for the year ending December 31, 2012 indicated that the Beneficiary earned \$15,000.

Upon review, we find that although the Petitioner did not meet the requirements of a motion to reopen in this matter.

First, the Petitioner initially claimed 2012 gross earnings of over \$253,000 but provided insufficient evidence to support the claim. On motion, the Petitioner asserts that advertising earnings belonging to the Petitioner were paid to the foreign entity and then transferred to the Beneficiary's personal bank account due to problems with registration and establishing a bank account for the Petitioner. The evidence of record indicates that this company was established in October 2011. The Petitioner's explanation regarding its business is not credible. Based on the evidence presented, it is reasonable for us to conclude that the foreign entity's invoices are for products or services due the foreign entity and not the U.S. Petitioner. As previously stated, neither financial statements nor tax

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returns are sufficient to establish that the Petitioner has been engaged in the regular, systematic, and continuous course of business on a day-to-day basis for at least one year prior to filing this petition. Here, the Petitioner provided an explanation in a letter, and not an affidavit as required, however even if an affidavit was provided it would not have been adequate to meet the requirements to reopen because the evidence presented was not likely to change the result.

Second, although the Petitioner submitted newly created documentation for consideration regarding its ability to pay the Beneficiary the proffered wage, we find the new documentation insufficient to warrant the reopening of this matter. The Petitioner submitted a newly created Form 1040 in which the Beneficiary claimed to amend his earned wages from \$15,000 to \$120,000 but the form is not a Form 1040X as would be used for an amended return, and there is no evidence that the new return was filed with the Internal Revenue Service. Further, the Petitioner's statement from its tax preparer is not an affidavit as required; it is merely notarized only establishing that [REDACTED] actually signed the letter. Since the record indicates that [REDACTED] prepared the Petitioner's financial statements upon which this tax return was based, it is unclear what additional information she was missing, or why she would have prepared another Form 1040 rather than the required Form 1040X to represent an amendment. It is also unclear why [REDACTED] verified the Beneficiary's salary of \$120,000 when the payroll documents originally list the Beneficiary's earnings of \$15,000. The Petitioner provided no information to address its contradictory payroll summaries. Overall, the Petitioner did not provide affidavits or reliable and consistent evidence to support its claim that it has the ability to pay the proffered wage to the Beneficiary. As such, the Petitioner has not established that the information submitted in support of this motion would change the outcome of this case if the proceeding were reopened.

Finally, the Petitioner has provided insufficient evidence to reopen the remaining findings by the Director. The Petitioner's assertion that the Beneficiary "truly" performs in an executive capacity is not sufficient to reopen this matter, or to establish that he was employed abroad or would be employed in the United States in a managerial or executive capacity.

"There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 U.S. 94, 107 (1988). 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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the Petitioner has not met that burden.

III. CONCLUSION

The Petitioner should note that, unless we direct otherwise, the filing of a motion to reopen or reconsider 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).

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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. Accordingly, the motion will be denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of S-G-C-USA, LLC*, ID# 14057 (AAO Oct. 19, 2015)