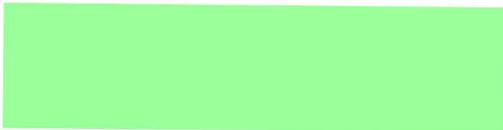




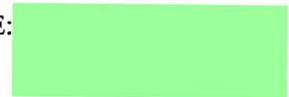
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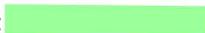


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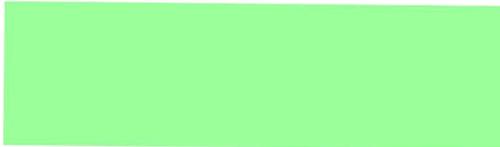


IN RE: Petitioner:



PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:



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, California Service Center, denied the petitioner's Immigrant Petition by Alien Entrepreneur (Form I-526) and the petitioner appealed that decision to this office, the Administrative Appeals Office (AAO). On April 17, 2012, we dismissed the petitioner's appeal, finding that she did not establish her eligibility for the petition, and that she willfully misrepresented a material fact. On February 4, 2014, we granted the petitioner's motion to reopen, affirmed our denial of the petition and affirmed our finding of material misrepresentation. The petitioner now files a second motion, a motion to reopen and reconsider. Our February 4, 2014 decision will be affirmed, the petition will remain denied with a finding of material misrepresentation.

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner filed a Form I-526 petition based on an investment in [REDACTED] the [REDACTED]. The [REDACTED] is a joint venture between the petitioner and [REDACTED]. After issuing a notice of intent to deny (NOID) and a September 9, 2010 site visit, the director denied the petition, finding that the petitioner had not demonstrated eligibility for the requested benefit. In addition, the director entered a "finding of fraud" based on the petitioner's submission of a false sublease between [REDACTED] and the [REDACTED]. In that lease, [REDACTED] purported to be the tenant of certain leased premises totaling 11,044 square feet of office space and sublet an undisclosed portion of those premises to the [REDACTED]. The director also concluded that the petitioner had misrepresented that the [REDACTED] had employed individuals, who were in fact employees of [REDACTED] and noted that the Forms I-9, Employment Eligibility Verifications, for the [REDACTED] appeared to have been altered.

On April 17, 2012, we dismissed the petitioner's appeal, finding that she did not establish her eligibility for the petition and that she had sought to procure a benefit provided under the Immigration and Nationality Act (the Act) through the willful misrepresentation of a material fact. While the finding of misrepresentation was limited to the submission of a sublease that contained demonstrably false information, we noted numerous other inconsistencies in the record pertaining to company names, the petitioner's risk, and the [REDACTED] finances, customers, business plan and employees. On February 4, 2014, we granted the petitioner's motion to reopen, and affirmed our April 17, 2012 decision. Specifically, we concluded that: (1) the evidence submitted on motion did not overcome our finding that the petitioner made material misrepresentation through her submission of a December 1, 2009 sublease that contains false information; (2) the relevant evidence submitted on motion predated our April 17, 2012 decision and did not overcome our finding of material misrepresentation; (3) the evidence submitted on motion was inconsistent with evidence already in the record as relating to the new location of the [REDACTED] and (4) the evidence submitted on motion did not establish the petitioner had acted in good faith or that the [REDACTED] was in operation. We noted that the discrepancies in the documents pertaining to the [REDACTED] current location could not resolve a finding of misrepresentation based on the prior submission of a false sublease.

¹ While we have previously noted the petitioner's failure to submit Exhibit A to the sublease that purportedly describes the portion involved in the sublease, the petitioner did not provide that exhibit in response to our July 22, 2011 notice of intent to dismiss or with the first motion and does not do so with the current motion.

On March 10, 2014, the petitioner filed her second motion, the instant motion to reopen and reconsider. In support of this motion, the petitioner submits the following documents: (1) the petitioner's March 7, 2014 affidavit; (2) an affidavit and a statement from [REDACTED] the Chief Executive Officer (CEO) of [REDACTED] both dated March 7, 2014; (3) a March 4, 2014 letter from Mr. [REDACTED] which he signed as the CEO of [REDACTED] (4) a March 4, 2014 letter from [REDACTED] the Chief Operating Officer (COO) of [REDACTED] (5) a March 7, 2014 Supreme Court of New York State grievance committee complaint form against [REDACTED] one of the petitioner's former attorneys; (6) a document entitled "Jack.Txt," purported to be a transcript of a March 3, 2014 recorded telephone conversation involving the petitioner, her husband and Mr. [REDACTED] and (7) the petitioner's March 6, 2014 affidavit relating to the recorded telephone conversation. The petitioner signed both English and Chinese versions of her affidavit. The petitioner provided a translation certificate confirming the Chinese document is a translation of the original English document. The petitioner has not indicated who prepared the original English version that the [REDACTED] translated. For the reasons stated below, we dismiss the motion and affirm our February 4, 2014 decision, including our finding of material misrepresentation.

II. MOTION TO REOPEN AND RECONSIDER

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) informs the public of the filing requirements for a motion and provides, in pertinent part, that a motion must be: "Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding."

In the instant motion, the petitioner has not submitted a statement indicating if the validity of our February 4, 2014 unfavorable decision has been or is the subject of any judicial proceeding. The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed."

Regardless, the petitioner has not otherwise met the requirements for a motion to reopen or motion to reconsider.

A. Motion to Reopen

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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." *Abudu*, 485 U.S. at 110. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, the petitioner's sole challenge is our finding of material misrepresentation. Specifically, the petitioner asserts that "within the past few days," she learned for the first time that "the Attorney and the partners in her EB-5 business submitted false documentation with the EB-5 petition, leading

the AAO to conclude, erroneously, that [the p]etitioner was aware of those improprieties and should be judged, harshly, for them.” The petitioner “does not dispute that there was a material misrepresentation of the facts made to the government here,” but claims that she had no knowledge of the submission of the false sublease. She asserts that she was not informed of details relating to documents submitted in support of her petition and that she had signed papers at the instruction of her former attorney, Mr. [REDACTED] whom Mr. [REDACTED] had “assigned” to her. We dismiss the motion to reopen for the following reasons.

First, while the petitioner is advancing an ineffective assistance of counsel claim against her former attorney, at issue is not Mr. [REDACTED] effectiveness as an attorney but the petitioner’s responsibility for the false document in the record. Regardless, the petitioner has not followed the procedural requirements under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988), *reaffirmed in Matter of Compean*, 25 I&N Dec. 1 (A.G. 2009). For a motion to reopen based on an alleged ineffective assistance of counsel, the petitioner must show: (1) that the alleged ineffective assistance of counsel claim is supported by an affidavit of the allegedly aggrieved party setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the petitioner in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond; and (3) that the motion reflects whether a complaint has been filed with the appropriate disciplinary authorities with respect to any violation of counsel’s ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. at 637.

On motion, the petitioner has submitted no evidence showing that she has informed her former attorney, Mr. [REDACTED] of the allegations leveled against him or has given him an opportunity to respond to the allegations. In addition, although the petitioner has submitted a completed grievance committee complaint form against Mr. [REDACTED] the petitioner has not provided any evidence showing that she filed the form with the appropriate disciplinary authorities, or provided any reasons why she did not file the form. As the petitioner has not followed the procedural requirements under *Matter of Lozada*, specifically, items (2) and (3) listed above, we dismiss her motion to reopen based on a claim of ineffective assistance of counsel against Mr. [REDACTED]

Second, regarding the petitioner’s claim that she had no knowledge of the misrepresentation in connection to her petition, as we noted in our April 17, 2012 decision, the petitioner, by signing her petition, certified under penalty of perjury that the petition and all evidence submitted with it, either at the time of filing or thereafter, are true and correct. *See* section 287(b) of the Act; 8 U.S.C. § 1357(b); 8 C.F.R. § 103.2(a)(2); 28 U.S.C. § 1746; 18 U.S.C. § 1621. The petitioner’s failure to apprise herself of what was submitted in support of her own petition constitutes deliberate avoidance and does not absolve her of responsibility for the content of her petition or the materials submitted in support of her petition. *See Hanna v. Gonzales*, 128 F. App’x 478, 480 (6th Cir. 2005) (finding that an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application’s contents). *Cf., Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991) (finding that a represented party who signs his or her name to documents filed in court bears personal, non-delegable responsibility

to certify truth and reasonableness of the documents and failure to meet that duty subject signor to Rule 11 sanctions). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. See *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993).

Moreover, the assertions the petitioner makes on motion that she understands little to no English is contradicted by other applications she had filed with the United States Citizenship and Immigration Services (USCIS). In her March 7, 2014 affidavit, the petitioner states that she “speak[s] and write[s] only minimal English”; she is “definitely not fluent in English”; and that she “had absolutely no chance of reading and understanding what was contained in the papers [she] signed in attorney [redacted] office in January 2010.” According to Mr. [redacted] March 7, 2014 affidavit, which the petitioner files on motion, the petitioner “did not and still cannot speak, read or write in English.” Applications the petitioner filed with USCIS contradict these assertions. Specifically, according to Part 5 of a Form I-539, Application to Extend/Change Nonimmigrant Status, which the petitioner signed on August 30, 2010, the petitioner “can read and understand English, and ha[s] read and understand each and every question and instruction on this form, as well as [her] answer to each question.”² Similarly, according to Part 5 of a Form I-485, Application to Register Permanent Residence or Adjust Status, the petitioner signed and acquiesced to being able to “read and understand English and understand each and every question and instruction on this form, as well as [her] answer to each question.” The petitioner signed these two forms certifying, under penalty of perjury, that the “application[s] and the evidence submitted with [them are] all true and correct.”³

Third, the documents that the petitioner submits on motion contain inconsistent information relating to the ownership and formation of the [redacted]. As we noted in both our April 17, 2012 and February 4, 2014 decisions, the record contains no evidence that [redacted] [redacted] are one and the same. On motion, the petitioner submits two documents from Mr. [redacted]. In his March 7, 2014 affidavit, Mr. [redacted] states that the petitioner and [redacted] formed the [redacted]. In his March 4, 2014 letter, however, Mr. [redacted] states that it was [redacted] not [redacted] and the petitioner that formed the [redacted]. Ms. [redacted]’s March 4, 2014 letter, which the petitioner submits on motion, similarly states that it was [redacted] not [redacted] and the petitioner that formed the [redacted]. The documents the petitioner submits on motion are internally inconsistent, and are inconsistent with documents already in the record that establish [redacted] and the petitioner formed the [redacted]. In addition, the petitioner asserts that her “introduction to” the [redacted] occurred in “late 2009” and that a Chinese company, [redacted], directed her to invest in the [redacted] in January 2010. The petitioner, however, signed the Joint Venture Company Organization Agreement on June 1, 2009. The [redacted] 2009 Form 1065 U.S. Return of Partnership Income, lists the establishment date as June 5, 2009 and the attached schedule K covering June 5, 2009 through December 31, 2009, lists the petitioner as a 41 percent owner of the [redacted].

² As a courtesy, we have attached a copy of the petitioner’s Form I-539 to this decision.

³ As a courtesy, we have attached a copy of the petitioner’s I-485 to this decision.

In addition, as noted in our July 22, 2011 notice of intent to dismiss, the petitioner's association with Mr. [REDACTED] is not limited to the joint venture. Specifically, another of Mr. [REDACTED] companies, [REDACTED] has filed multiple nonimmigrant petitions on behalf of the petitioner's spouse on August 16, 2010 [REDACTED], June 2, 2011 [REDACTED], and May 2, 2013 [REDACTED]. None of the statements the petitioner submits on motion acknowledge this additional connection to Mr. [REDACTED]. This employment connection between Mr. [REDACTED] and the petitioner's spouse is relevant to the implication in her affidavit that she had no contact with Mr. [REDACTED] after January 2010 other than viewing some television screens in medical offices in "mid-2010" and her statement that in "the following years 2010-14, I have received absolutely no information or updates indicating the status of my investment or the business progress of DTS."

Fourth, the document that purports to be the transcript of a recorded telephone conversation is insufficient to show that we should grant the petitioner's motion to reopen. The purported transcript includes no indicia of reliability or accuracy. Other than the petitioner's conclusory statements that she and her husband spoke to Mr. [REDACTED] on March 3, 2014, and that she recorded the telephone conversation, she has provided no evidence supporting her claims that she either talked to Mr. [REDACTED] on March 3, 2014 or accurately recorded the telephone conversation. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Indeed, Mr. [REDACTED] makes no mention of the March 3, 2014 telephone conversation in either his March 4, 2014 letter or his March 7, 2014 affidavit and statement. Moreover, the petitioner created a recording and transcript of the recording after we issued two decisions explaining the bases of our material misrepresentation finding. The transcript has minimum evidentiary weight, as the petitioner has created it to support the instant motion. Furthermore, as discussed above, even if the petitioner did not have actual knowledge of the submission of the false sublease, she may still be liable for the submission because deliberate avoidance is not a defense to misrepresentation. *See Bautista*, 396 F.3d at 1301; *Puente*, 982 F.2d at 159.

Accordingly, we dismiss the petitioner motion to reopen. *See* 8 C.F.R. § 103.5(a)(2).

B. Motion to Reconsider

Motions for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In essence, a motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new evidence. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2). Regarding both motions to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(ii) states in relevant part: "The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction." The latest decision was our February 4, 2014 decision dismissing the petitioner's first motion to reopen. Therefore, a review of any claims or assertions that the petitioner's instant motion raises is limited in scope and is restricted to that decision.

On motion, the petitioner has not specifically identified what law or USCIS policy we had applied incorrectly in our February 4, 2014 decision based on the previous factual record. The petitioner's mere request for us to reconsider evidence in the record, without stating any error in our previous decision, does not warrant a grant of a motion to reconsider. *See Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief); *Desravines v. United States Att'y Gen.*, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal by a *pro se* litigant are deemed abandoned). The only legal authorities the petitioner cites on motion in support of a favorable finding relate to the necessary knowledge and willfulness required for a finding of misrepresentation. As discussed above, however, the record does not support the petitioner's assertions that she was unfamiliar with English and did not understand the documents she signed. Accordingly, we dismiss the petitioner motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3).

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, we will affirm our February 4, 2014 decision. The petition will remain denied with a finding of misrepresentation.

ORDER: Our February 4, 2014 decision is affirmed, and the petition remains denied with a finding of misrepresentation.