

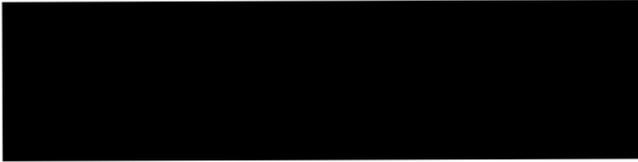


U.S. Citizenship  
and Immigration  
Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

D7

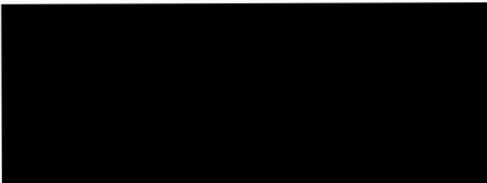


File: SRC 01 201 55196 Office: TEXAS SERVICE CENTER Date: **MAR 28 2006**

IN RE: Petitioner:   
Beneficiary: 

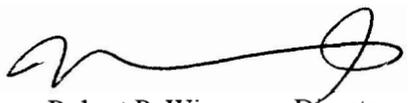
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office  


**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to deny the petition. The matter is now before the AAO on motion to reopen and motion to reconsider. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant 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 is a corporation organized in the State of Florida that is engaged in the import and export of leather goods. The petitioner seeks to employ the beneficiary as the sales manager of its new office in the United States.

In a decision dated January 17, 2002, the director denied the petition concluding that the petitioner had failed to establish: (1) that the beneficiary's proposed employment involved executive or managerial authority over the new operation or that that the new U.S. office, within one year of the approval of the petition, will support an executive or managerial position; and (2) that sufficient physical premises to house the new office had been secured. The AAO affirmed the director's decision on appeal in a decision dated April 21, 2004.

Counsel for the petitioner filed the instant motion to reopen and reconsider on May 20, 2004. On motion, counsel states, in pertinent part:

Appellant argues that under the original lease signed by the parties by an involuntary mistake was omitted by the landlord who later on filed for bankruptcy. . . .

The new lease agreement submitted was a consequence of the acts in bad faith by the original landlord who filed for bankruptcy. It has been doing business at the same place for the past two and a half years now.

[The petitioner] is purchasing the warehouse that secures sufficient space required by the regulations.

The beneficiary's experience and education has proved to be an excellent manager. . . . His experience [in] this field in the Company in Colombia is the bases [sic] to the success in the Miami Company.

In support of the motion, counsel submits: evidence that the company identified as the landlord on the petitioner's original lease, [REDACTED], filed for bankruptcy in May 2002; a copy of a claim for \$14,300 for "goods sold," filed by the petitioner against [REDACTED] on June 5, 2002; a copy of an October 7, 2002 letter from [REDACTED], stating that the petitioner has been its tenant, operating a retail store at [REDACTED], Miami, Florida 33122 since August 2001; a copy of a previously submitted lease agreement between the petitioner and [REDACTED], which has a commencement date of August 15, 2001; a purchase agreement and loan approval letter related to the petitioner's purchase of a condominium unit in Miami in 2003; the petitioner's IRS Form 1120X, Amended U.S. Corporation Income

Tax Return for 2003; the petitioner's 2002 and 2003 IRS Forms 1120, U.S. Corporation Income Tax Return; the petitioner's March 31, 2004 balance sheet; and copies of the beneficiary's recent bank statements.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup>

A review of the evidence submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All of the evidence submitted related to the issue of whether the petitioner had obtained sufficient physical premises to house its new office pre-dates the filing of the appeal in October 2002 and could have been discovered or presented in the previous proceeding. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen. The petitioner was put on notice of required evidence, and given a reasonable opportunity to provide it for the record before the petition and subsequent appeal were adjudicated.

In addition, the AAO notes that the evidence submitted with respect to the petitioner's purchase of property in 2003 is not probative of the petitioner's eligibility as of the date of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Finally, counsel has not acknowledged, and the evidence submitted does not rebut, the director's and AAO's determination that the petitioner had failed to establish that the petitioner would employ the beneficiary in a managerial or executive capacity or that the U.S. office, within one year would support a managerial or executive position.

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

---

<sup>1</sup> 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 RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Although the instant motion is titled "motion to reopen/remand," counsel also requests that the AAO reconsider its previous decision. The regulation at 8 C.F.R. § 103.5(a)(2) 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.

Counsel has not submitted any evidence that would meet the requirements of a motion to reconsider. Counsel does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. Counsel does not argue that the previous decisions were based on an incorrect application of law or Service policy. Assuming, *arguendo*, that the petitioner intended to file a motion to reconsider, the petitioner's motion will be dismissed.

Finally, it should be noted for the record that, unless CIS directs 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).

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. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.