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File: WAC 03 021 51760 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: On March 12, 2003, the Director of the California Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) and, on June 17, 2005, the AAO dismissed the appeal. On July 15, 2005, purported counsel to the beneficiary filed a Motion to Reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A), 103.5(a)(2), and 103.5(a)(4).

The petitioner is a Nevada corporation allegedly engaged in the entertainment business. The petitioner seeks to employ the beneficiary as its executive director 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 director denied the petition after concluding that the petitioner failed to establish a qualifying relationship between the United States and foreign entities or to establish that the beneficiary will be employed in a primarily executive or managerial capacity. The AAO subsequently dismissed the appeal.

The Motion to Reopen filed on July 15, 2005 clearly states that it is being made on behalf of the beneficiary. The Motion is not being made on behalf of the petitioner. Citizenship and Immigration Services (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary and her purported representative are not recognized parties, counsel is not authorized to file a motion and the Motion must be dismissed for this reason. 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and 103.5(a)(4).

Moreover, 8 C.F.R. § 103.5(a)(2) states, in pertinent part, that "[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.¹

In support of the Motion, the beneficiary submitted a variety of business and organizational materials relating to the petition. However, these documents could have been submitted in the previous proceeding, and the beneficiary offers no explanation in her Motion as to why any or all of the documents were not submitted. As such, there is no evidence submitted on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. To the extent any of the documents refer to events occurring after the date of the initial petition, these documents would be irrelevant to this proceeding and the beneficiary's inability to present them earlier would be of no consequence. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

¹The 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).

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." *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.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen 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. Title 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.

As the motion did not meet the applicable requirements, it will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.