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20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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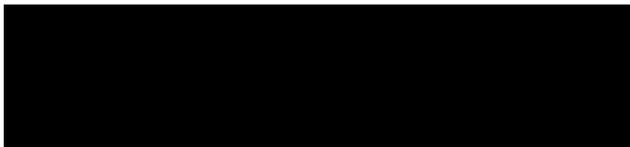
File: SRC 02 149 53394 Office: TEXAS SERVICE CENTER Date: NOV 01 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On December 31, 2002, the Director of the Texas Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on June 5, 2007, the AAO dismissed the appeal. On July 5, 2007, counsel to the petitioner filed a Motion to Reconsider 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)(C), 103.5(a)(3), and 103.5(a)(4).

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of 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 business entity organized under the laws of Kenya, which claims to have a qualifying relationship with the United States entity, Hatari 2000, Inc., a Georgia corporation. The petitioning organization is allegedly engaged in the electrical engineering consulting business.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. In denying the petition, the director noted that she could not consider the petitioner's alleged acquisition of a dry-cleaning business, and the resultant employment of five additional people, both of which occurred after the filing of the instant petition, in considering whether the beneficiary will perform qualifying duties.

The AAO subsequently dismissed the appeal concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. The AAO also indicated that the beneficiary's alleged performance of qualifying duties in the operation of a dry-cleaning business acquired after the filing of the instant petition could not be considered. 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). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. Finally, beyond the decision of the director, the AAO denied the petition because the petitioner failed to establish that it had been doing business during its first year in operation. 8 C.F.R. § 214.2(l)(14)(ii)(B).

The petitioner filed a Motion to Reconsider the AAO's decision on July 5, 2007. Counsel asserts that both the director and the AAO erred, that the petitioner established that the beneficiary will primarily perform qualifying duties, and that both the director and the AAO should have considered the beneficiary's operation of the dry-cleaning business even though it was acquired after the filing of the instant petition. Counsel argues that the record establishes that the petitioner had an equitable interest in the business even though actual closing did not occur until after the filing of the instant petition on April 15, 2002.

Upon review, the motion shall be dismissed for failing to meet applicable requirements. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). 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 did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

Furthermore, upon review, the AAO will dismiss the motion for failure to meet the applicable requirements for motions to reconsider set forth in 8 C.F.R. § 103.5(a)(3). This regulation states, in pertinent part, that "[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 [Citizenship and Immigration Services (CIS)] policy." In this matter, counsel fails to cite to any pertinent precedent decisions establishing that the AAO's decision was an incorrect application of law or CIS policy. To the contrary, and as correctly noted by the AAO, 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; *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition, and the beneficiary's operation of a subsequently purchased dry-cleaning business is not relevant to the analysis. As such, the Motion does not meet the applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).¹

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. The motion will be dismissed.

Finally, it should be noted for the record that, unless CIS 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. 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. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

¹Counsel clearly identifies the instant Motion as a motion to reconsider. However, to the extent the Motion could be construed to be a motion to reopen, it is noted that the Motion does not meet the applicable requirements in 8 C.F.R. § 103.5(a)(2). This regulation 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." In this matter, the petitioner offers no new evidence. Counsel simply summarizes the evidence previously submitted in support of the appeal. This is insufficient under the regulations to support a motion to reopen.