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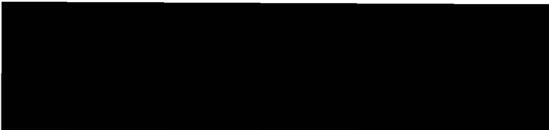
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IN RE: Petitioner: UNION SERVICES INTERNATIONAL GROUP, CORP.
Beneficiary: ROBERTO ALFREDO SAMANEZ

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 December 20, 2006, the Director of the Vermont Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on December 21, 2007, the AAO dismissed the appeal. On January 29, 2008, counsel to the petitioner filed a Motion to Reopen/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)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee to open a new office in the United States 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 under the laws of the State of Florida and is allegedly a travel agency.

The director denied the petition concluding that the petitioner did not establish that (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity within one year; or (2) the beneficiary was employed abroad in a primarily managerial or executive capacity. The AAO dismissed the subsequently filed appeal.

Citizenship and Immigration Services (CIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Similarly, CIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the motion was filed on Tuesday, January 29, 2008, 39 days after the AAO's December 21, 2007 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. As the record does not establish that the failure to file the motion within 30 days of the decision was reasonable and beyond the affected party's control, the motion is untimely and must be dismissed for that reason.¹

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. 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

¹It is noted that counsel attempted to file the instant motion directly with the AAO on January 22, 2008. However, the AAO immediately, and appropriately, returned the motion and the filing fee to counsel. The regulations clearly require that all motions be "submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction." 8 C.F.R. § 103.5(a)(1)(iii)(E). Likewise, the instructions on the first page of the AAO's December 21, 2007 decision indicate that all further inquiries be made to the office which originally decided the case. It is noted that all documents filed with CIS must be filed "in accordance with the instructions on the form," which includes where the documents should be filed, and improperly filed documents shall not retain filing dates. *See* 8 C.F.R. § 103.2. Accordingly, counsel's attempt to file the motion directly with the AAO did not establish a receipt date of January 22, 2008. It is further noted that counsel's ability to file the motion, albeit incorrectly, with the AAO within 33 days of the date of the AAO's decision indicates that it was not beyond the petitioner's control to file a timely motion to reopen.

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 also be dismissed for this reason.

Finally, upon review, the AAO will dismiss the motion for failure to meet the applicable requirements for motions to reopen set forth in 8 C.F.R. § 103.5(a)(2) and motions to reconsider set forth in 8 C.F.R. § 103.5(a)(3).

This regulation at 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." In this matter, the petitioner offers no new evidence. Accordingly, the motion does not meet applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).

Likewise, this regulation at 8 C.F.R. § 103.5(a)(3) 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 [CIS] policy." In this matter, counsel states only that "[t]he record clearly shows that this is an L-1A caliber position, and that the enterprise will grow to sufficient size within one year to support an executive or managerial position." This assertion fails to satisfy the requirements set forth in the regulations for motions to reconsider. Counsel cites no precedent decisions and fails to clearly articulate the reasons for reconsideration. As such, the motion does not meet the applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).²

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.

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 reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

²It is noted that counsel indicates in the Form I-290B that he will submit a brief and/or evidence within 30 days. Not only is the record devoid of any evidence of a brief or additional materials having been submitted to the AAO, it is noted that, unlike appeals, motions may not be supplemented with a brief or additional materials after filing. *See* 8 C.F.R. § 103.5(a)(2) (the motion must be filed with evidence); 8 C.F.R. § 103.5(a)(3) (setting forth the requirements for a motion for reconsideration). Accordingly, even if counsel had filed a brief or additional evidence after the filing of the instant Motion, such materials could not be considered by the AAO in this matter.