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U.S. Citizenship
and Immigration
Services

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File: WAC 04 068 51685 Office: CALIFORNIA SERVICE CENTER Date: **JAN 30 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On November 4, 2005, the Director of the California Service Center denied the nonimmigrant visa petition after considering a motion to reopen the initial denial of the petition dated March 24, 2004. The petitioner appealed the November 4, 2005 denial to the Administrative Appeals Office (AAO), and, on April 19, 2007, the AAO dismissed the appeal. On May 22, 2007, 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)(iii), 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 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 corporation organized under the laws of the State of California and is allegedly a wholesaler of computer parts and hardware. 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. The AAO dismissed the subsequently filed appeal.

On motion, the petitioner asserts that the AAO erred in dismissing the appeal because the record establishes that the beneficiary will be employed in a primarily managerial or executive capacity.

Upon review, the motion shall be dismissed for failing to meet applicable requirements.

First, the regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. This regulation states that motions "shall be submitted on Form I-290B." In this matter, the petitioner did not submit its motion on Form I-290B. Accordingly, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4); *see also* 8 C.F.R. § 103.2(a).

Second, the regulation at 8 C.F.R. § 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). Once again, 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 failing to meet the applicable requirements for motions to reopen set forth in 8 C.F.R. § 103.5(a)(2). "[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." *Id.* In this matter, the petitioner offers no new evidence on motion. The unsupported statements of counsel or the petitioner in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Accordingly, the motion does not meet the applicable requirements of a motion to reopen and must be dismissed for that reason.

Finally, the AAO will dismiss the motion for failing 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 [U.S. Citizenship and Immigration Services (USCIS)] policy." *Id.* In this matter, the petitioner fails to cite to any pertinent precedent decisions that establish that the AAO's decision to dismiss the appeal, based on the petitioner's failure to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, was based on an incorrect application of law or policy.

For example, the petitioner cites in its motion three precedent decisions decided by the regional commissioner of the legacy Immigration and Naturalization Service (INS). The petitioner claims that its "conclusion is consistence [sic] with the reasoning" of these decisions. Importantly, however, the petitioner does not argue that the AAO's decision to dismiss the appeal was an incorrect application of the law as set forth in these precedent decisions. Absent some articulation of the pertinence of the authority to the director's reasoning, the arbitrary citation of precedent decisions will not permit a motion to conform to the applicable requirements for motions to reconsider set forth in 8 C.F.R. § 103.5(a)(3).

Regardless, upon review, the cited precedent decisions are not pertinent to the instant matter. The petitioner offers no evidence that the facts in those precedent decisions are analogous to the instant petition or, crucially, that the AAO misapplied the law in dismissing the appeal. In *Matter of Vaillancourt*, 13 I&N Dec. 654 (Reg. Comm'r 1970), the regional commissioner concluded that a service parts manager was employed abroad in a specialized knowledge capacity and that, under the Immigration and Nationality Act, could be transferred to the United States to be employed in a managerial or executive capacity. The nature of the beneficiary's proposed employment in the United States was not addressed by the regional commission. In *Matter of Bocris*, 13 I&N Dec. 601 (Reg. Comm'r 1970), the regional commissioner decided that a beneficiary may be classified as a nonimmigrant intracompany transferee even though he is also the beneficiary of an approved immigrant petition. Again, the nature of the beneficiary's proposed employment in the United States was not addressed. Finally, in *Matter of Pozzoli*, 14 I&N Dec. 569 (Reg. Comm'r 1974), the regional commissioner addressed the source of the beneficiary's remuneration, not the nature of his managerial or executive duties in the United States.

Accordingly, as none of the precedent decisions cited by the petitioner are pertinent to the AAO's application of law or policy in its dismissal of the appeal, the motion fails to meet applicable requirements. The random citation of authority will not permit a motion to reconsider to withstand scrutiny. Rather, as made clear by the regulations, the movant must, at a minimum, cite pertinent precedent decisions and specifically connect this law with the AAO's alleged failure to follow these precedents. 8 C.F.R. § 103.5(a)(3). As the petitioner failed to do this in this matter, the motion 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

¹The petitioner also cites as authority an unpublished AAO decision, *Matter of Harrison Pacific Inc.*, WAC 92 192 51184 (AAO Feb. 16, 1994). However, unpublished AAO decisions are not "pertinent precedent decisions" which can establish that the AAO's decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Immigration and Nationality Act, unpublished decisions are not similarly binding.

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

ORDER: The motion is dismissed.