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U.S. Department of Homeland Security
U.S. Citizenship & Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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Services

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File: EAC 07 098 50455 Office: VERMONT SERVICE CENTER Date:

OCT 19 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)

ON 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).

Perry J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal in a decision dated October 29, 2008. The AAO subsequently granted the petitioner's motion to reconsider, and affirmed its previous decision to dismiss the appeal. The matter is now before the AAO on a second 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, a California corporation, states that it intends to engage in the "bee industry." The petitioner claims to be a subsidiary of [REDACTED], located in Hong Kong. The petitioner seeks to employ the beneficiary as the sales manager of its new office in the United States.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity; or (2) that the beneficiary would be employed by the U.S. company in a primarily managerial or executive capacity within one year.

The AAO dismissed the petitioner's subsequent appeal and found that the director had correctly denied the petition on both grounds stated above. The AAO found that the petitioner had not adequately described the beneficiary's duties while employed by the foreign entity, the staffing structure of the foreign entity, the beneficiary's proposed duties in the United States, or the petitioner's anticipated organizational structure within one year of commencing operations. Based on these deficiencies, the AAO concluded that the petitioner had not established that the beneficiary has been or would be employed in a primarily managerial or executive capacity.

On motion, counsel for the petitioner asserts that the AAO erroneously ignored evidence submitted on appeal, and in doing so, improperly relied on two Board of Immigration Appeals (BIA) decisions, *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Counsel emphasizes that the AAO, unlike the BIA, reviews all cases *de novo*, is not restricted to the original record, and has "typically" accepted and considered new documents or other evidence submitted by appellants. Counsel further argued that the petitioner improperly relied upon a case involving an alien entrepreneur in determining what constitutes an appropriate business plan.

The AAO granted the petitioner's motion to reconsider and affirmed its previous decision on July 23, 2009. In its decision, the AAO addressed each of counsel's arguments in considerable detail. The AAO noted that its authority to rely on BIA decisions is set forth in the regulations at 8 C.F.R. § 1003.1(g), which provides that BIA decisions are binding on all officers and employees of the Department of Homeland Security in the administration of the immigration laws of the United States unless such decisions are modified or overruled. The AAO explained that, pursuant to the binding precedent decisions, *Matter of Soriano* and *Matter of Obaigbena*, the AAO was not required to accept previously requested evidence submitted for the first time on appeal. Finally, the AAO noted

that, even if it had accepted such evidence on appeal, the evidence of record remained insufficient to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

With respect to the beneficiary's proposed U.S. employment, counsel argued on motion that the AAO improperly ignored evidence submitted in response to a request for evidence, and improperly relied on *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm. 1998), a precedent decision relating to the regulatory requirements for the alien entrepreneur immigrant visa classification, in determining that the petitioner failed to provide an adequate business plan. In its decision dated July 23, 2009, the AAO clarified that it did not deny the petition based on the petitioner's failure to meet the *Matter of Ho* standard with respect to what constitutes an acceptable business plan. Rather, the AAO explained that it dismissed the appeal because the petitioner did not adequately describe the beneficiary's proposed duties in the United States, as required by 8 C.F.R. § 214.2(l)(3)(ii), nor did it submit sufficient evidence of the proposed organizational structure of the U.S. company after the first year of operations, as required by 8 C.F.R. § 214.2(l)(3)(C)(I). The AAO acknowledged that the petitioner submitted a voluminous response to the director's request for evidence, but emphasized that the evidence submitted did not meet these two evidentiary requirements.

In the present motion to reconsider, counsel argues that "the AAO's requirements to accept evidence submitted on appeal were satisfied in this case." Counsel emphasizes that, contrary to the AAO's finding, "the petitioner did make a good faith response to the RFE" and therefore the AAO should not have excluded the evidence provided on appeal.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

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. 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

The AAO's review in this matter is limited to the narrow issue of whether the petitioner has documented sufficient reasons, supported by pertinent precedent decisions, to warrant the reconsideration of the AAO's decision issued on July 23, 2009. Counsel's arguments in the instant matter are not supported by any pertinent precedent decisions. Counsel appears to suggest once again that the AAO improperly excluded evidence submitted on appeal, and ignored evidence contained in the petitioner's response to the director's RFE. As noted above, these arguments were thoroughly addressed in the AAO's previous decision. The AAO acknowledged in both of its previous decisions that the petitioner submitted a voluminous response to the director's request for

evidence (RFE); however, the AAO also emphasized that the petitioner's response did not include required evidence that was specifically requested in the RFE, including a detailed description of the duties the beneficiary performed while employed by the foreign entity and the amount of time he devoted to managerial duties. Finally, the AAO noted that the description of the beneficiary's duties submitted on appeal, even if considered, would not be sufficient to overcome the director's determination that the petitioner failed to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Similarly, counsel does not address the AAO's findings that the petitioner's response to the RFE, despite containing 37 exhibits, did not include evidence to satisfy specific evidentiary requirements set forth at 8 C.F.R. §§ 214.2(l)(3)(ii) and 214.2(l)(3)(v)(C)(I). Counsel's assertion that the AAO "ignored evidence" without more, does not provide sufficient grounds to warrant reconsideration of the AAO's previous decision. Accordingly, the motion will be dismissed.

In addition, 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." The petitioner's motion does not contain this statement. 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 does 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.

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.