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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship and Immigration Services

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FILE: WAC 08 008 52082 Office: CALIFORNIA SERVICE CENTER Date: SEP 03 2009

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)

ON BEHALF OF PETITIONER:  
[Redacted]

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:** The Director, California Service Center, denied the petition for a nonimmigrant visa. A subsequent motion to reopen was denied and the prior decision was upheld. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner, which claims to be engaged in color trend research, seeks to extend the employment of the beneficiary as a color marketing analyst and branch manager in the United States as a nonimmigrant intracompany transferee with specialized knowledge. The petitioner claims to be the subsidiary of Korea Color & Fashion Trend Center, located in Seoul, Korea.

On December 14, 2007, the director denied the petition, determining that the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment requires specialized knowledge. In addition, the director found that the petitioner had failed to submit evidence demonstrating that the U.S. entity was doing business as defined by the regulations.

Newly-retained counsel for the petitioner filed a motion to reopen on January 14, 2008. On motion, counsel submitted a brief and additional documentary evidence, most of which had been previously submitted in support of the petition prior to adjudication. The director declined to reopen the proceedings and dismissed the motion on January 23, 2008, finding that the petitioner had not met the requirements of a motion to reopen because it had failed to state any new facts or submit any supporting affidavits in support of its contentions.

On February 21, 2008, counsel appealed the director's decision of January 23, 2008 to the AAO. On appeal, counsel requests an oral argument and submits a brief that is virtually identical to the motion previously submitted on January 14, 2008. In addition, counsel submits nineteen exhibits identical to those submitted in support of the January 14, 2008 motion. Counsel, however, does not address the basis for the director's decision of January 23, 2008.

The AAO will first address counsel's request for oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, United States Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The remaining issue before the AAO is whether the petitioner has addressed and overcome the basis for the director's denial of the petitioner's motion to reopen on January 23, 2008.

On appeal, counsel fails to address the basis for the director's dismissal of the motion, and submits a brief and supporting documentation which is virtually identical in content to the motion filed on January 14, 2008. Counsel instead addresses the original denial of the petition, issued on December 14, 2007.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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."

The director dismissed the petitioner's motion of January 14, 2008, finding that it did not meet the requirements of 8 C.F.R. § 103.5(a)(2). On appeal, counsel for the petitioner fails to address the basis for the director's decision, and instead limits its appeal to the original decision of December 14, 2007.<sup>1</sup>

In order to properly address the merits of the appeal, the AAO will review the director's basis for denial and the contents of counsel's motion to reopen.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's

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<sup>1</sup> The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. See 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first basis for the director's denial was whether the petitioner established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

With regard to the claimed specialized knowledge position of the beneficiary, the petitioner stated that the beneficiary had developed an expertise in color forecasting, design elements and color/fashion marketing. The director found the petitioner's initial evidence insufficient to establish eligibility, and consequently issued a detailed request for additional evidence on October 17, 2007. In response, the petitioner provided the following overview of duties:

- 1) Spending about 40% of her time collaborating with local surveyors and color marketing organizations to research and analyze color and style trends in the fashion industry;
- 2) Spending about 20% of her time directing the categorization of researched data according to season, location, customer base and other demographics;
- 3) Spending 15% of her time conducting in-depth analyses of the fashion runways in the U.S. to develop comprehensive reports for the parent company of the emerging themes and color trends of the coming seasons;
- 4) Spending 15% of her time supervising the preparation of monthly reports on the major trends, highlighting color, fabric, key silhouettes and print & pattern directions with explanations of the season's important merchandising issues; and
- 5) Spending about 10% of her time reviewing monthly business and financial activities reports.

The director found that this description of duties did not establish that the beneficiary possessed specialized knowledge. Specifically, the director found that researching color trends in U.S. markets and consulting with Korean companies did not distinguish the beneficiary's knowledge as superior or unique to the knowledge possessed by the petitioner's other employees. Moreover, the director noted that despite the description of duties filed in response to the request for evidence, the description was not comprehensive enough to demonstrate that the beneficiary possessed an advanced level of knowledge or expertise in the petitioner's processes or procedures. Finally, the director found that the beneficiary's experience abroad with the parent company did not establish that the beneficiary was an individual possessing specialized knowledge. The director noted that, despite counsel's assertions that an expert understanding of color trends and fashion was necessary for marketing the petitioner's products in the United States, counsel failed to support these contentions with documentary evidence establishing the veracity of such claims.

Additionally, the director also concluded that the petitioner had failed to establish that it had been doing business in the United States. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

In this matter, the petitioner claims that it is engaged in the observation of fashion trends. It further claimed, at the time of filing, that it employed three persons. Although the petitioner claimed to have been established in 2006, no income was claimed, and it indicated on Form I-129 that it was a "foreign corporation."

The director denied the petition, finding that the petitioner had failed to satisfy the regulatory requirements for doing business. Specifically, the director found that the sole function of the petitioner, as a branch office, was to report to the head office in Korea on fashion trends in the U.S. The director noted that no evidence had been submitted to establish that the petitioner had been providing the regular, systematic, and continuous provision of goods and/or services since its authorization to do business. Although the director requested evidence of the petitioner's business dealings, the petitioner submitted only payroll records, bank statements and a yellow pages listing of the company in response to this query. The petitioner contended that no sales invoices were available for submission, since the petitioner did not generate commercial sales in the U.S.

On motion dated January 14, 2008, newly-retained counsel for the petitioner contended that the petitioner was actively engaged in business and that the beneficiary was employed in a specialized knowledge capacity. In support of this contention, counsel for the petitioner submitted nineteen supporting documents, many of which were submitted with the initial petition, in support of the petitioner's eligibility for the benefit sought. The director, however, found that the evidence submitted in support of the motion did not state new facts nor was it accompanied by affidavits or other documentary evidence as required by the regulations.

The issue before the AAO, therefore, is whether the director's decision dated January 23, 2008 which dismissed the petitioner's motion was proper.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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.<sup>2</sup>

On motion, counsel submitted an abundance of documentary evidence in support of the petitioner's eligibility. For example, counsel submitted copies of the beneficiary's academics transcripts, an April 2006 business plan for the U.S. office, an overview of the duties of a color marketing analyst, copies of payroll checks and DE-6 forms for the last two quarters of 2007, recommendation letters from associations in the industry, bank records, and a certificate of employment. On motion, counsel did not state new facts; rather, counsel affirmed that in its initial stage of operation, the petitioner never had an intention or purpose to provide goods, and currently, the beneficiary merely evaluates data and observes fashion trends and reports to the Korean office. Regarding the specialized knowledge of the beneficiary, the petitioner claims that the fashion industry is a highly specialized and subjective profession, and that the beneficiary's extensive experience has qualified her for the duties of the proffered position.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. It is further noted that the petitioner has submitted evidence with this motion that was originally requested by the director in a request for additional evidence dated October 17, 2007. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion was not "new." Consequently, the director correctly found that a proper basis for a motion to reopen did not exist.

The regulation at 8 C.F.R. §103(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 [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.

Although counsel submitted a motion entitled "Motion to Reopen and Reconsider," counsel did not submit any document that would meet the requirements of a motion to reconsider. Counsel did not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. Counsel did not argue that the previous decisions were based on an incorrect application of law or Service policy.

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<sup>2</sup> The 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).

On appeal, counsel submits a brief that is virtually identical to the motion previously submitted on January 14, 2008. In addition, counsel submits nineteen exhibits identical to those submitted in support of the January 14, 2008 motion. Counsel, however, does not address the basis for the director's decision of January 23, 2008.

The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." As discussed above, the petitioner submitted no new evidence with affidavits and supporting documentation to justify the reopening of the proceedings. Consequently, the director's January 23, 2008 decision was proper.

On appeal, counsel ignores the basis of the director's January 23, 2008 dismissal and simply resubmits the brief and additional evidence deemed insufficient to meet the requirements of a motion to reopen or reconsider. Since counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal now before the AAO, the appeal will be dismissed and the previous decision of the director will not be disturbed.

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 met that burden.

**ORDER:**        *The appeal is summarily dismissed.*