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



**U.S. Citizenship  
and Immigration  
Services**

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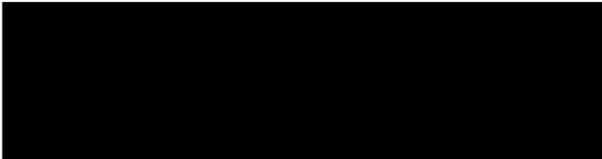


File: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 04 2010

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)

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is now before the AAO on a combined motion to reopen and reconsider. The AAO will dismiss the motion and affirm its prior decision dismissing the appeal.

The petitioner, a Florida corporation, filed this nonimmigrant petition seeking to employ the beneficiary as its general manager charged with opening a new office in the United States 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 director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

The petitioner subsequently filed an appeal, which was dismissed by the AAO based on the conclusion that the petitioner had failed to overcome the ground cited for denial. The AAO noted that evidence of events that took place after the petition was filed would not be considered because the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The AAO found that the job description for the beneficiary's proposed employment was vague and lacked specific information about the beneficiary's actual daily job duties. The AAO also noted that the petitioner had not received a sufficient financial investment that would enable the entity to grow and succeed during its first year of operation. The AAO further found that the petitioner failed to establish that the beneficiary would be relieved from having to primarily perform non-qualifying tasks after the first year of employment.

The AAO went on to issue three more findings in addition to those cited in the director's decision. First, the AAO found that the petitioner failed to establish that it had secured sufficient physical premises to house the new office pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A). Second, the AAO concluded that the petitioner failed to establish that it and the foreign entity are qualifying organizations pursuant to 8 C.F.R. § 214.2(l)(3)(i). Third, the AAO found that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity pursuant to 8 C.F.R. § 214.2(l)(3)(v)(B).

On motion, the petitioner addresses the adverse findings cited in the AAO's decision in an attempt to overcome such findings and establish eligibility for the immigration benefit sought. The petitioner repeatedly states that in its haste to provide a response to U.S. Citizenship and Immigration Services' (USCIS) request for additional evidence (RFE) without the assistance of legal counsel, the petitioner did not provide sufficient information about key eligibility requirements. The petitioner indicates that it filed the instant motion for the purpose of supplementing the record with the necessary information.

The AAO finds that the petitioner's statements are not persuasive and do not meet the requirements of a motion to reconsider or a motion to reopen.

The regulations at 8 C.F.R. § 103.5(a)(2) state, 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.

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>1</sup>

In the present matter, the petitioner has not presented any new evidence or information to warrant the granting of a motion to reopen. As previously stated in this decision and in the AAO's earlier decision, any facts that came to be or events that took place after the Form I-129 was filed will not be considered for the purpose of determining the petitioner's eligibility with respect to the present petition, as eligibility must be established at the time of filing the petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Thus, the petitioner's repeated references to information that is irrelevant for the purpose of establishing whether the petitioner was eligible at the time of filing the petition do not meet the requirements of a motion.

Next, the regulations 8 C.F.R. § 103.5(a)(3) includes the following provisions for a motion to reconsider:

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.

The petitioner in the present matter has not cited to any precedent decisions that indicate the AAO incorrectly applied law or USCIS policy in dismissing the appeal; nor is there any evidence that the decision to dismiss the appeal was incorrect based on the record at the time of the AAO's decision. Therefore, the petitioner's submissions do not meet the requirements of a motion to reconsider.

Therefore, the motion to reopen and reconsider will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

Please note that the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.

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<sup>1</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).