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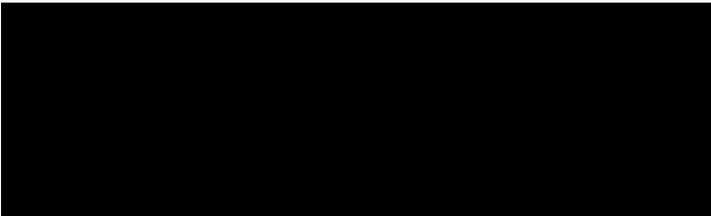
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



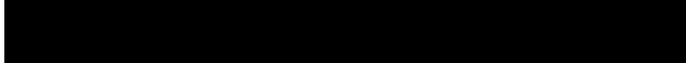
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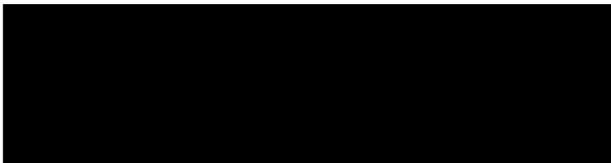
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File: SRC 05 248 51900 Office: VERMONT SERVICE CENTER Date: **MAY 20 2010**

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:

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, Texas Service Center, denied the petition for a nonimmigrant visa. The petitioner appealed this denial to the Administrative Appeals Office (AAO). On August 6, 2007, the AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner filed this nonimmigrant visa 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 Kentucky corporation, states that it intends to engage in retail sales. The petitioner states that it is a branch office of [REDACTED] located in Mumbai, India. The petitioner seeks to employ the beneficiary as the executive manager of its new office in the United States for a period of three years.¹

The director denied the petition on May 26, 2006, concluding that the petitioner failed to establish: (1) that the United States company had secured sufficient premises to house the new office; and (2) the size of the United States investment and the ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States.

The AAO dismissed the petitioner's subsequently filed appeal on August 6, 2007. The AAO concurred with the director's two stated grounds for denial of the petition. The AAO further found that the petitioner had failed to establish: (1) that the beneficiary had been employed by the petitioner's claimed foreign parent company in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3)(v)(B); (2) that the beneficiary would be employed in the United States in a primarily managerial capacity within one year of approval of the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(C); and (3) that the U.S. petitioner was not a qualifying organization as defined at 8 C.F.R. § 214.2(l)(ii)(G)(2).

On motion, counsel for the petitioner asserts that "the AAO lacked the jurisdiction to conduct de novo review in this case," and states that "the decision should be vacated except with respect to the issues presented on appeal." With respect to the two issues which formed the basis of the director's denial of the petition, counsel noted that the AAO's decision was largely based upon its finding of numerous discrepancies in the record, for which counsel accepts responsibility. In this regard, counsel states:

I am attorney of record for [the petitioner] in connection with its petition for an L-1A visa. Part of the services provided to [the petitioner] in representing the company in this matter included the preparation of a business plan and other documents. Because I have similar factual scenarios presented by different clients, I maintain a selection of "master documents," which I modify to meet specific individual circumstances. The numerous discrepancies noted by the AAO in the record are the result of my having failed to properly modify the documents.

Counsel requests that, "[w]ith respect to the issues originally presented on appeal, the AAO should consider the evidence presented without ascribing the errors of counsel to the petitioner or the petitioner's credibility."

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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 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 instant motion consists of counsel's brief rejecting the AAO's authority to conduct a *de novo* review of the record of proceeding, and counsel's statement in which she generally accepts responsibility for any discrepancies observed which may have raised doubts regarding the credibility in the petitioner's evidence.

While counsel has stated a reason for reconsideration, counsel's acknowledgement of her own shortcomings in representing the petitioner's case does not establish that the AAO's decision was based on an incorrect application of law or USCIS policy, and thus does not meet the requirements of a motion to reconsider as set forth at 8 C.F.R. § 103.5(a)(3). The actual signature portion of the Form I-129 at part 6 requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct." On that basis alone, the petitioner must be held responsible for any discrepancies contained within the record of proceeding.²

Regardless, while counsel concedes that the AAO's findings of discrepancies in the petitioner's evidence were indeed justified, counsel makes no attempt to resolve the discrepancies in this proceeding. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Counsel's acknowledgement that she failed to "properly modify" her template documents does not constitute

² The AAO notes that, even if the petitioner was unaware of the documents and information submitted in support of the petition, then this failure to apprise itself constitutes deliberate avoidance and does not absolve the petitioner of responsibility for the content of the petition or the materials submitted in support. *See, e.g., Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents).

"competent objective evidence," nor does it shed light on the petitioner's actual circumstances as of the date of filing this petition.

Counsel also contends that the AAO must reconsider the decision and vacate its three additional grounds for denial of the petition, as it "lacked the jurisdiction to conduct *de novo* review in this case." Counsel cites to no pertinent precedent decisions to establish that the AAO's *de novo* review was based on an incorrect application of law or USCIS policy. As stated in the AAO's decision, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Therefore, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043. The petitioner has not made such a showing.

A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The "statement of [counsel]" that has been provided on motion is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law, that the signer, in signing the statements, certifies the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with other unsupported assertions of counsel, 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).

As noted above, counsel makes no specific reference to the detailed findings made in the AAO's 11-page decision and the deficiencies remarked upon therein. No new facts have been provided to support a motion to reopen, and no valid reasons have been stated for reconsideration. Accordingly, the motion will be dismissed for failing to meet the applicable requirements of a motion to reopen or a motion to reconsider. 8 C.F.R. § 103.5(a)(4).

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.