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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: NOV 01 2011 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under 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 \$630. 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 Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a combined motion to reopen and motion to reconsider. The AAO will dismiss the motion.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager 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 Commonwealth of Puerto Rico that is engaged in the sale and distribution of aluminum products. The petitioner claims that it is a branch of [REDACTED] located in Santo Domingo, Dominican Republic. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and subsequently granted a one-year extension of status. The petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition on two separate and alternative grounds, concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, or (2) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The AAO dismissed the petitioner's subsequent appeal in a decision dated July 28, 2009, finding that the petitioner had failed to submit evidence to overcome either of the stated grounds for denial of the petition. The AAO further found that the petitioner had failed to establish that the U.S. and foreign entities maintain a qualifying relationship, pursuant to 8 C.F.R. § 214.2(l)(3)(i), and denied the petition for this additional reason. With respect to the beneficiary's employment capacity with the United States entity, the AAO concurred with the director's determination that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition, based on the petitioner's failure to submit a detailed description of the beneficiary's stated duties, and its failure to document that it employs or contracts sufficient subordinate staff to relieve the beneficiary from performing the day-to-day administrative and operational functions of the business.

The matter is now before the AAO on a combined motion to reopen or reconsider. In a statement submitted in support of the Form I-290B, Notice of Appeal or Motion, counsel for the petitioner asserts that the AAO "erred by applying a different standard of review well beyond the 'preponderance of the evidence' required for this type of case." Counsel further asserts that "the decision fails to take into account all the evidence included, the economic reality of this nation and rules in detriment of prior precedents and the economy of this country." Counsel discusses the beneficiary's employment capacity for the United States entity, but does not acknowledge or address the two other grounds for denial of the petition addressed in the AAO's decision.

Counsel requested 30 days in which to submit evidence in support of the motion. As of this date, no additional evidence has been received. The AAO notes that although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Therefore, counsel's request for 30 days in which to submit additional documentation is denied. Nevertheless,

the AAO notes that the motion was filed on August 31, 2009, and, as of this date, no additional documentation has been incorporated into the record of proceeding.

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.

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.¹ The AAO finds that counsel's brief offers no new facts to support a reopening of these proceedings, nor is supported by affidavits or any documentary evidence. The brief primarily repeats the arguments that were submitted in support of the appeal and already considered by the AAO.

The regulations governing motions are found at 8 C.F.R. § 103.5. The provision at 8 C.F.R. § 103.5(a)(3) states:

Requirements for 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 Service 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.

This regulation is supplemented by the instructions on the Form I-290B, Notice of Appeal or Motion, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions.² With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

Therefore, to merit reconsideration of the AAO's decision to dismiss the appeal, the petitioner must both (1) specifically cite laws, regulations, precedent decisions, and/or binding U.S. Citizenship and Immigration Service (USCIS) policies that the petitioner believes that the AAO misapplied in deciding to dismiss the appeal; and (2) articulate how those standards cited on motion were so misapplied to the evidence before the

¹ 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 College Dictionary* 736 (2001)(emphasis in original).

² The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

AAO as to result in a dismissal that should not have been rendered.

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."

As noted above, the instant motion consists of counsel's two-page statement, in which she addresses only one of the three grounds for denial discussed in the AAO's decision dated July 28, 2009, and repeats the same arguments made in her brief submitted on appeal. The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reconsider is strictly limited to an examination of any purported misapplication of law or USCIS policy. A motion to reconsider must be supported by citations to appropriate statutes, regulations, or precedent decisions.

In the instant case, counsel does not cite any legal precedent or applicable statute or regulation that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. Therefore, the motion 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.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. 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) and must be dismissed for this additional reason.

As a final note, 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.