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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: **JAN 04 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiaries:

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, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner filed this nonimmigrant petition to employ the beneficiary pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an intracompany transferee with specialized knowledge to open a new office in the United States. The petitioner, a California corporation engaged in the restaurant business, seeks to employ the beneficiary as a Chinese cook for a period of one year.

The director denied the petition on August 4, 2008, and the AAO denied the subsequent appeal on April 3, 2009 on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary has specialized knowledge or that he was or will be employed in a capacity involving specialized knowledge; and (2) that it has a qualifying relationship with the foreign employer pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

On May 12, 2009, counsel for the petitioner submitted the Form I-290B motion to reopen the decision of the AAO. On motion, counsel submits a brief and a single Mexican tax document for [REDACTED]. The tax document submitted is not relevant to this proceeding as it does not establish that the petitioner has a qualifying relationship with the foreign employer or that the beneficiary has and will be employed in a capacity involving specialized knowledge.

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 unsupported statements of counsel on appeal or in a motion are not evidence and thus 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).

The AAO notes that on June 5, 2009, approximately 30 days after the motion was due, counsel submitted an original and translated letter from [REDACTED] dated April 28, 2009, which states, [REDACTED] since 1991 until 2005 was the owner of [REDACTED] [the foreign employer], and in the year 2005 made a transfer of his restaurant to me," photocopies of a menu, a Mexican tax document for [REDACTED] an original and translated letter of recommendation for the beneficiary from [REDACTED] and other documents that were not translated to English.

On a motion to reopen, any additional evidence to be considered must be attached to the Form I-290B at the time of filing. Here, counsel submitted the motion, brief, and tax document without any indication that additional evidence would be submitted at a later date. Counsel then submitted additional evidence for consideration one month after the filing of the motion. If the petitioner had wanted the supplemental evidence to be considered, it should have submitted the documents at the time of filing the motion to reopen.

Additionally, the AAO's decision cited numerous inconsistencies in the record that were not addressed by counsel or the petitioner on motion. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The purpose of a motion to reopen is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the reopening of the AAO's decision to dismiss the petitioner's appeal on April 3, 2009. The AAO previously conducted a *de novo* review of the entire record of proceeding, an appellate decision was issued, and the deficiencies were expressly stated in the AAO's 10-page decision. Upon review, the previous decisions of the director and the AAO 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. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.