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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

87



DATE: **JUL 19 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 nonimmigrant visa petition was denied by the director, California Service Center. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the director's and the AAO's decisions will be undisturbed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as a 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 Texas corporation, states that it operates an industrial precision machine shop. It claims to be an affiliate of Maquinados de Precision y Representaciones S.A. de C.V. located in Ciudad Juarez, Mexico. The petitioner is seeking initial employment for the beneficiary in L-1A status for a period of three years to serve in the position of General Manager.

On November 7, 2008 the director denied the petition finding that the record was insufficient to establish that the beneficiary would be employed primarily in a qualifying managerial or executive capacity.

In a decision dated December 8, 2009, The AAO dismissed the appeal. The AAO concurred with the director's finding that the record was insufficient to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. On motion, counsel requests that the AAO "reconsider its decision" based on counsel's contention that the record supports a finding that the beneficiary will be acting in an executive capacity, and, "in light of the Service's policy to encourage creation of jobs for United States workers."

Counsel's assertions do not satisfy the requirements of either a motion to reopen or a motion to reconsider. The regulations 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>1</sup>

On motion, the petitioner submits (1) a copy of the prior Form I-129 approval notice valid from September 13, 2007 to September 12, 2008, (2) a copy of the Form I-129 receipt notice dated September 9, 2008, (3) a copy of the Request for Evidence ("RFE") issued on September 19, 2008, (4) a copy of a letter dated October 28, 2008 submitted in response to the RFE, (5) a copy of the director's denial dated November 7, 2008, (6) a copy of the Form I-290B receipt notice dated December 8, 2008 and underlying Form I-290B appeal, (7) a copy of a brief dated January 5, 2009 submitted in support of the appeal, (8) a copy of the petitioner's letter dated December 18, 2008 submitted in support of the appeal, (9) a copy of the transfer notice dated August 14, 2009, (10) a copy of the AAO's denial of the appeal dated December 8, 2009, and (11) a copy of the Adjudicator's Field Manual section 11.1.

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). The evidence submitted was either previously available and could have been discovered or presented in the previous proceeding, or it post-dates the petition.

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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).

Specifically, counsel submits copies of previously submitted briefs and letters in support of prior filings. Counsel submits no new evidence in support of the motion to reconsider other than a copy of the Adjudicator's Field manual, which was available to counsel in the prior appeal.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *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.

In addition, the motion does not satisfy the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

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.

On motion, counsel does not submit any document that would meet the requirements of a motion to reconsider. A review of the record and the adverse decision indicates that the AAO properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the AAO did not sustain the appeal. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulations.

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. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.