



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 05 2013** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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)

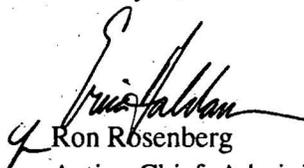
ON BEHALF OF PETITIONER:

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,

  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on November 8, 2012, the AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify 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 New York corporation established in October 2010, states that it intends to engage in the import, export and retail sale of cellular phones and other consumer electronics. The petitioner claims to be a branch office of [REDACTED] located in Pakistan. The petitioner seeks to employ the beneficiary as the director of its new office in the United States.

The director denied the petition on May 18, 2011, concluding that the petitioner failed to establish that the beneficiary will be employed as a manager or executive within one year of approval of the petition. In denying the petition, the director observed that the record did not support a finding that the new company would grow to the point where it would require the beneficiary to perform primarily managerial or executive duties within one year. The director further found that the submitted position descriptions were too vague, that the petitioner did not indicate that the beneficiary would supervise any subordinate managers, supervisors or professionals, and that it was unclear how the petitioner's anticipated staff of two sales associates would relieve the beneficiary from performing primarily first-line supervisory duties, operational tasks, and other non-managerial functions associated with operating the business. The director also briefly discussed deficiencies in the record with respect to the size of the United States investment and the financial ability of the foreign entity to commence doing business in the United States.

On appeal, counsel for the petitioner asserted that the director erroneously denied the petition by applying only the criteria applicable to the statutory definition of "managerial capacity." Counsel further asserted that the beneficiary's position meets the requirements of executive capacity and should be adjudicated as such. Counsel also contended that the foreign entity's most recent bank statements, which were submitted in response to the RFE, are sufficient to establish the foreign entity's ability to invest in the U.S. company.

The AAO dismissed the petitioner's appeal on November 8, 2012 on three alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary would be employed in a qualifying managerial or executive capacity within one year of approval of the petition; (2) the size of the U.S. investment and the foreign entity's ability to invest in the petitioner; and (3) that a qualifying relationship exists between the U.S. company and the foreign entity.

The AAO thoroughly addressed counsel's objections to the denial of the petition in a 12-page decision. The AAO found that the petitioner did not provide any detail or explanation of the beneficiary's activities in the course of his daily routine and the description provided merely paraphrased the statutory definition of executive capacity. The AAO further found that the petitioner's minimal business plan failed to establish that the beneficiary would be relieved from performing non-qualifying duties within one year of commencing operations. The AAO found that the petitioner did not provide information on the size of the financial

investment needed in order to commence operations in the United States and that there is no indication that the foreign entity has invested or will invest in the U.S. company. Finally, the AAO concluded that the petitioner did not submit any documentary evidence of ownership for the U.S. company or the foreign entity in support of its claim that they have a qualifying branch or affiliate relationship. The AAO observed that, although the beneficiary registered both entities, there was no evidence that the petitioner issued shares to the foreign entity or to the beneficiary, nor did the petitioner provide any government-issued registration or other reliable evidence of ownership of the foreign entity.

The petitioner subsequently filed the instant motion to reopen and reconsider the AAO's decision of November 8, 2012. On motion, counsel for the petitioner submits a brief which includes a description of the beneficiary's proposed duties that is identical in substantive content to the descriptions previously submitted and considered in the AAO's decision to dismiss the petitioner's appeal on November 8, 2012. Counsel does not address the issue of the size of the financial investment in the U.S. company. Counsel addresses the AAO's finding that the petitioner failed to establish a qualifying relationship with the foreign entity by simply stating that "it was clearly documented that the petitioner is a branch of [the] foreign entity." Counsel goes on to state that the U.S. company and the foreign entity have common ownership because the evidence shows that the beneficiary registered both companies.

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 solely of counsel's brief dated December 7, 2012. There is no reference made to the findings made in the AAO's decision and the specific deficiencies remarked upon therein, no new facts provided to support a motion to reopen, and no reasons stated for reconsideration. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

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 reopen is strictly limited to an examination of any new facts, which must be supported by affidavits

and documentary evidence. A motion for reconsideration must state the reasons for re-consideration and be supported by pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy. As such, counsel's previously submitted arguments based on the Service Center director's original decision cannot be considered "new" facts or provide a reason for reconsideration of the AAO's appellate decision. The AAO previously conducted a *de novo* review of the entire record of proceeding and has already addressed the arguments contained in counsel's brief. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated.

Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant the re-opening or reconsideration of the AAO's decision issued on November 8, 2012. In the current proceeding, counsel has not adequately addressed the grounds stated for dismissal of the appeal.

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 met 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.