



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 11 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 and a motion to reopen and reconsider. The petitioner filed an appeal with the Administrative Appeals Office (AAO), which the AAO dismissed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner seeks to extend the employment of the beneficiary as its Director/President as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The petitioner, a Texas corporation, claims to engage in the business of "Retail Gift Item, Cell phone accessories & Dryclean Pickup Point [*sic*]." It claims to employ nine employees and have an estimated gross annual income of \$485,000 for 2008. The beneficiary was initially granted a one-year period of stay in the United States in L-1A status in order to open a new office, and the petitioner seeks to extend the beneficiary's stay for an additional three years.

The AAO dismissed the appeal, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. In dismissing the appeal, the AAO found that the petitioner's description of the beneficiary's duties was vague and lacked adequate detail or explanation of the beneficiary's activities in the course of his daily routine. The AAO also found that the record contained several inconsistencies regarding the scope and nature of the petitioner's business activities, particularly the number of, locations, and types of businesses the petitioner engages in, as well as regarding the petitioner's personnel structure at each of its locations. Finally, the AAO found that the record contained insufficient evidence to establish that the petitioner meets the requirements of 8 C.F.R. § 214.2(I)(14)(ii)(B) and (E).

Counsel for the petitioner filed the instant motion to reopen and reconsider. On Form I-290B, Notice of Appeal or Motion, counsel asserts that with the additional evidence presented in the instant motion, the petitioner has met its burden of proof by a preponderance of the evidence. In support of the motion, counsel submits a "sample of invoices" purportedly generated by the company's cell phone division and the petitioner's 2008 income statement in order to demonstrate that the company has been doing business. Counsel also submits a sworn affidavit from the beneficiary explaining his job duties, and a copy of a previously submitted list of the petitioner's employees and their job responsibilities. Counsel also asserts that the director failed to fairly consider its petition and motion, and used an incorrect standard of proof to deny the petition.

The regulation 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 evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup> The petitioner's statements on Form I-290B and accompanying new evidence contain no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). In

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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).

particular, counsel's submission of invoices from 2008 does not constitute new facts, as counsel failed to establish that such evidence was not available and could not have been discovered or presented in the previous proceeding. Similarly, counsel's submission of a new affidavit from the beneficiary discussing his job duties does not constitute new facts, particularly since such evidence was specifically requested in the director's RFE.

Furthermore, 8 C.F.R. § 103.5(a)(3) 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.

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.<sup>2</sup> 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 most recent decision, 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 AAO as to result in a dismissal that should not have been rendered.

While counsel references two precedent decisions in the instant motion, counsel does not articulate how these decisions apply to the instant motion and establish that the standards were so misapplied to the petitioner's evidence as to result in a dismissal that should not have been rendered. Counsel merely asserts that the director used an incorrect standard of proof by using the phrase "clearly show," and then cites to the precedent decisions to illustrate the correct standard of proof. Counsel fails to establish how the director's single use of the phrase "clearly show" establishes that the director used an improper standard of proof. In any case, counsel made the same claim in its previous appeal to the AAO, and the AAO affirmed the director's decision

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<sup>2</sup> 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.

to deny the petition in its September 21, 2011 decision. Accordingly, the petitioner's statements on the Form I-290B are insufficient to support a motion to reconsider.

The AAO notes that the petitioner has made several of the same claims in prior motions and in its appeal to the AAO, and the AAO has addressed these claims in its prior decision. The petitioner appears to be broadly requesting reconsideration of every decision made by the director and the AAO to date. The AAO emphasizes that the purpose of a motion 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 of USCIS policy by the AAO in its previous decision. The AAO previously conducted a *de novo* review of the entire record of proceeding when it dismissed the petitioner's appeal on September 21, 2011. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per every petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated.

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 prior decision. Here, the petitioner barely addresses the AAO's specific findings in its September 21, 2011 decision, and instead, mostly reiterates the same arguments the petitioner previously made on appeal regarding the director's purported errors. As such, counsel's most recent assertion that the petitioner submitted sufficient evidence to establish eligibility for the benefit does not meet the requirements of a motion. The motion fails to establish that the decisions to deny the petition and subsequent appeal were incorrect based on the evidence of record at the time of the initial decision, as required by 8 C.F.R. § 103.5(a)(3).

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 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.