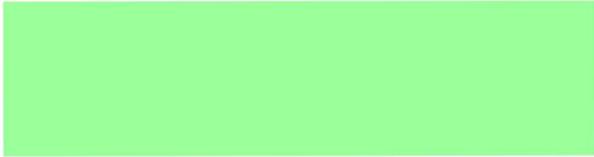
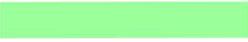


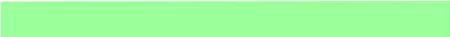
(b)(6)



U.S. Citizenship  
and Immigration  
Services



Date: **APR 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center ("the director"), denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal and affirmed its decision on a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on a second motion to reopen and reconsider. The motion will be dismissed.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under 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 employed in a managerial or executive capacity. The petitioner, an Ohio corporation, states that it is engaged in distribution of industrial products and supply chain management. It claims to be a wholly-owned subsidiary of [REDACTED] located in the People's Republic of China. The petitioner seeks to employ the beneficiary as its International Trading Desk Manager.

The director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary has been or will be employed in a primarily executive or managerial capacity; and (2) the beneficiary possessed at least one continuous year of full-time employment with the foreign entity within the three years preceding the filing of the petition.

The AAO dismissed the petitioner's appeal, finding that the evidence does not support a finding that the beneficiary will be employed in a primarily managerial or executive capacity or that the beneficiary was employed in a managerial or executive capacity for the foreign employer. The AAO withdrew the director's determination that the petitioner failed to establish that the beneficiary possessed at least one continuous year of full-time employment with the foreign entity within the requisite three-year time period.

The petitioner subsequently filed a motion to reopen and reconsider. The AAO granted the motion and upheld the prior dismissal of the appeal. Specifically, the AAO found that the petitioner made material changes to the beneficiary's job description on motion by stating for the first time that the beneficiary was a function manager. Furthermore, the AAO determined that even if the beneficiary were considered a function manager, the job duties for the position were vague, and the petitioner did not meet its burden of proving that the beneficiary's duties are "primarily" managerial.

The petitioner subsequently filed the instant motion to reopen and reconsider. The petitioner states that the job duties supplied with the initial petition evidence the beneficiary's employment as a function manager. The petitioner further disagrees with the prior decision, stating that the beneficiary's job duties submitted with the initial petition do in fact meet the burden of proof.

The petitioner's assertions do not satisfy the requirements of either a motion to reopen or a motion to reconsider.

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 found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup>

The petitioner did not submit any evidence in support of its brief. Furthermore, the brief did not contain any new fact not previously provided.

Motions for the reopening 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. *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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

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, the petitioner 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 does not specify why the director's decision was based on an incorrect application of law or USCIS policy, or cite to any relevant statute, regulation or relevant precedent decision. Assuming *arguendo* that the petitioner claimed the beneficiary managed a function in the initial submission, the petitioner fails on motion to state how the previous AAO decisions incorrectly applied the law of Service policy when determining that the beneficiary's duties do not evidence that she has been or would be performing primarily managerial duties. The petitioner's only reiterates its previous argument on appeal and on motion that the beneficiary's job duties meet the burden of proof without further legal analysis. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the applicable statute and regulations. Accordingly, the petitioner's motion to reconsider will be dismissed.

The AAO acknowledges the petitioner's request for oral argument. The regulations at 8 C.F.R. § 103.3(b) provide that the requesting party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, the petitioner

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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).

identified no unique factor or issue of law to be resolved. Moreover, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument will not be granted.

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).

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 sustained 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, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.