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

(b)(6)

DATE: APR 19 2013 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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 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 California corporation, claims to engage in the import and export business. According to Form I-129, the petitioner claims to employ five employees and have a gross annual income of $925,000. 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 two 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. In dismissing the appeal, the AAO found that the petitioner's description of the beneficiary's duties was overly broad and lacked adequate detail or explanation of the beneficiary's activities in the course of his daily routine. The AAO found that the petitioner failed to document what proportion of the beneficiary's duties are managerial or executive in nature, and what proportion are actually non-managerial. The AAO also found that the petitioner failed to articulate the duties of the subordinate employees employed in the United States. Finally, the AAO found that the record contained insufficient evidence to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner filed the instant motion to reopen and reconsider. In a brief accompanying Form I-290B, Notice of Appeal or Motion, the petitioner provided the following explanation for filing the instant motion:

> (a) We have attached the management chart & detailed duties of the employees in the organization including the employees. It clearly establishes that the beneficiary is working in a managerial/executive capacity, and all the non-manageiral work was done by other employees.
>
> (b) We are also attaching the incorporation document, in which it is clearly mentioned that the 100% share is owned by the Principal Entity in India, [redacted] In addition, also see attached the copy of share certificate.
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> Please note that the petitioner had established the eligibility at the time of filing, as we are aware of the fact the petition cannot be approved at a future date after the petitioner becomes eligibility [*sic*] under a new set of facts, as indicated in the Matter of Kartigbak, 14 I&N Dec. 45, 49 (Comm. 1971) and Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).
>
> In this case, there is no new set of facts.
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> In view of the above it is respectfully requested that the Petitioner's motion to reconsider the denial of the application, and the L-1A visa be approved.

In support of the instant motion, the petitioner submitted a new organizational chart for the U.S. entity and new positions description for the beneficiary and his subordinate employees. The petitioner also submitted copies of its Articles of Incorporation dated June 5, 2002 and its share certificate dated June 20, 2002.

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.[1] The petitioner's statements in the brief accompanying Form I-290B and the newly submitted evidence contain no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). In fact, the petitioner concedes that "there is no new set of facts." The petitioner's submission of a new organizational chart for the U.S. entity, new positions description for the beneficiary and his subordinate employees, a copy of its Articles of Incorporation dated June 5, 2002, and a copy of its share certificate dated June 20, 2002 does not constitute "new" facts, as the petitioner failed to establish that these documents were not available and could not have been discovered or presented in the previous proceeding.

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.[2] 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

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[1] 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).

[2] 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.

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.

Here, the petitioner failed to specifically state the reasons for reconsideration and articulate why it believes the AAO's prior decision was incorrect based upon the evidence of record at the time of decision. The petitioner also failed to cite to any laws, regulations, precedent decisions, and/or binding USCIS policies and articulate how those laws, regulations, precedent decisions, and/or binding USCIS policies would support the instant motion. Accordingly, the petitioner's statements in its brief accompanying Form I-290B are insufficient to support a motion to reconsider.

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.