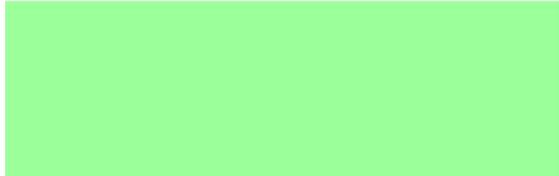




U.S. Citizenship
and Immigration
Services

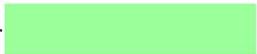
(b)(6)



DATE: APR 29 2013

Office: VERMONT SERVICE CENTER

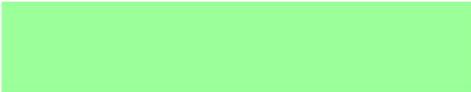
FILE:



IN RE:

Petitioner:

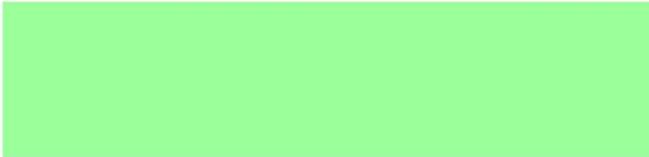
Beneficiary:



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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now again before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its President and Managing Director 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 is a corporation organized in the State of New York involved in the import and sale of leather goods. The beneficiary was previously granted one year in L-1A classification in order to open a new office in the United States and was previously extended in this status for three years. The petitioner now seeks to extend the beneficiary's status for three additional years.

The director denied the petition, finding that the petitioner had failed to establish that there was a qualifying relationship between the petitioner and foreign entity. The director noted that the petitioner had not established that it maintained sufficient premises to conduct its leather import business, and further that the petitioner had not shown that the foreign employer continued to conduct business abroad. Additionally, the director also concluded that the petitioner had not sufficiently established that the beneficiary was acting in a managerial or executive capacity as required by the Act.

The petitioner subsequently filed an appeal. The AAO affirmed the director's determination and dismissed the appeal. The AAO concurred with the director's finding that the petitioner had failed to establish that the beneficiary was employed in the capacity of a manager or executive, as defined by the Act. The AAO noted the petitioner provided a vague description of the beneficiary's job duties. The AAO also concurred with the director's conclusion that the petitioner had not shown that it had secured sufficient premises to house the business. Lastly, the AAO found that the petitioner had failed to establish that the foreign entity continues to do business as a qualifying organization abroad.

The petitioner now files a motion to reopen and reconsider the aforementioned AAO decision. The petitioner asserts errors on the part of the Service Center and does not directly contest the decision of the AAO. The petitioner maintains that the extension is supported by substantial evidence and submits a large amount of additional evidence claiming it establishes: (1) that the petitioner can now support the beneficiary's executive or managerial position; (2) that the petitioner has now secured sufficient physical premises; and (3) that the foreign company is regularly conducting business.

According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding, in this case, the AAO.

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."

Here, the petitioner does not submit any new evidence, nor has it established that the AAO's decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. 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.¹

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, 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 to dismiss the petitioner's previous appeal.

In support of its motion, counsel submits additional documentation, including: (1) IRS Form W-2 documentation for 2011; (2) a listing of various petitioner transactions from 2012; (3) various petitioner invoices dating from 2009 through 2012; (4) a lease agreement, and related pictures, for a home office secured in July 2012 and an additional lease for storage space in 2012; (5) tax return documentation for the petitioner from 2009 through 2012; (6) customer purchase orders from 2010 through 2012; and, (7) website screenshots dating from October 2012.

Evidence submitted on motion must be "new" as defined below or relevant to showing that the conclusions of the AAO were incorrect based on the evidence of record at the time of the initial decision. However, the evidence submitted on motion is not relevant to establishing an error in fact or law on the part of the AAO as it asserts facts occurring after the relevant period of analysis for determining eligibility for extension; specifically, the period prior to the submittal of the original I-129 Petition for a Nonimmigrant Worker in August 2010. As such, even if the petitioner were found to be conducting business in a regular and systematic fashion in 2012, this is not relevant to establishing the beneficiary's eligibility in August 2010 when the petition was filed. For instance, the fact that petitioner has secured sufficient premises in July 2012, even if found sufficient, is completely irrelevant to a finding of whether the petitioner had sufficient premises in August 2010. Also, evidence of the foreign employer conducting business in 2012, again if found sufficient to support the beneficiary's role, is not relevant to determining eligibility in 2010 when the petition

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 College Dictionary* 736 (2001)(emphasis in original).

was filed. Indeed, counsel states directly on motion that the petitioner suffered a "hiccup" in its operations in 2010, suggesting that the beneficiary was not eligible for extension in August 2010. Put simply, evidence submitted by the petitioner relevant to its current operations is irrelevant and will not be given consideration as this is not a *de novo* review of the record to determine eligibility.

As previously noted, 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 to dismiss the petitioner's previous appeal. The petitioner has not met this burden. In fact, the petitioner has not provided a single specific mention of law or applicable precedent decision on appeal, but asks the AAO to consider its current business operations as qualifying the beneficiary for L-1A status. Further, the petitioner had not provided any new evidence to directly refute the viable conclusions made by the AAO in its appeal dismissal; specifically: (1) that the beneficiary's provided duties too vague to conclude to the beneficiary acted primarily in a managerial or executive capacity; (2) that the petitioner had only submitted evidence showing storage space, not office space sufficient for U.S. operations; or (3) that the petitioner had submitted insufficient evidence of the foreign company's operations to conclude it was doing business as defined by the Act. Again, the evidence provided by the petitioner is only relevant to showing the beneficiary's current operations, which are irrelevant to the beneficiary's eligibility for extension in August 2010. Lastly, the petitioner has not specifically noted any errors of law or fact made by the AAO, but only notes that the Director's decision was not supported by the substantial evidence previously generated by the petitioner. Once more, the AAO is not under an obligation to completely reconsider the full record pursuant to a motion to reopen to reconsider. The AAO has already provided an appellate decision related to this matter, and there is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. As such, counsel has not presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to reopen or reconsider the AAO's previous dismissal. For this reason, the motion must be dismissed.

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 be dismissed for this additional 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.

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. 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.