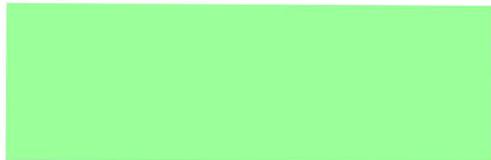


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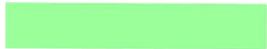
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **AUG 22 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: SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner filed a motion to reconsider, which the director granted, and denied the petition. The petitioner then appealed this denial to the Administrative Appeals Office (AAO), and, on December 31, 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 AAO will grant the motion to reconsider and affirm its previous decision.

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 Florida corporation established in January 2010, engages in the business of advertising and marketing technology. It claims to be a 100% owned subsidiary of [REDACTED] located in Venezuela. The petitioner seeks to employ the beneficiary as the chief financial officer (CFO) of its new office in the United States for a period of one year.

The director denied the petition on July 27, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition. The director observed that the beneficiary's job duties included routine bookkeeping functions such as "creating financially and statically [*sic*] tools and reports using spreadsheets and updating data using database applications." The director concluded that the beneficiary would likely perform the non-managerial, day-to-day functions of the U.S. operations. The director granted the petitioner's subsequent motion to reconsider and affirmed the denial of the petition on November 15, 2011.

The petitioner subsequently filed an appeal to the AAO. On December 31, 2012, the AAO dismissed the appeal and affirmed the director's decision to deny the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In its decision, the AAO found that the beneficiary's proposed duties consist of primarily non-qualifying, routine bookkeeping duties. The AAO further found that the beneficiary's duties will overlap with the those of the accountant and CEO. The AAO also found that the petitioner's claimed organizational structure and staffing, including the position descriptions for the U.S. employees, were not credible and that many of the described job duties for the U.S. employees were similar to each other. The AAO concluded that the petitioner failed to establish that the new U.S. operation could realistically support the beneficiary in a primarily managerial role within one year.

The AAO further found that the petitioner failed to establish a qualifying relationship to [REDACTED] (the "foreign entity"). The AAO observed that the petitioner submitted a stock certificate and stock transfer ledger issuing five hundred shares to the foreign entity in exchange for \$10,000. However, the foreign entity's letter states that it "initially funded the subsidiary . . . with a total of approximately \$202,000." The AAO further observed that the petitioner's business plan lists the "planned investment" from the foreign entity as \$300,000. The AAO recognized that the petitioner submitted its own and the foreign entity's bank statements to show several wire transfers from the foreign entity to the petitioner; however, the bank statements did not identify the recipients or remitters of the wire transfers. Furthermore, the dates of the wire transfers made and received by the foreign entity and the petitioner do not match. Finally, the AAO observed

that a letter from [REDACTED] Vice President of [REDACTED] states that he met with the petitioner's proprietors, [REDACTED] and [REDACTED] in June 2010, thus undermining the petitioner's claims that it is 100% owned by the foreign entity.

The petitioner subsequently filed the instant motion to reopen and motion to reconsider the AAO's decision dated December 31, 2012. On motion, the petitioner submits a brief in which it addresses the qualifying relationship issue and reiterates that the beneficiary will be employed in a qualifying managerial capacity.

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.

On motion, the petitioner disputes the AAO's finding that its organizational chart and claimed organizational structure was not credible. Specifically, the AAO found that the petitioner's organizational chart listing [REDACTED] as the Advertising Manager was not credible because the evidence in the record indicated that [REDACTED] is the petitioner's Vice President, Secretary, and one of its two Directors. The AAO observed that the petitioner's organizational chart and descriptions of its U.S. staff did not mention the position of Vice President/Secretary, occupied by [REDACTED] and depicted [REDACTED] as the only director.

The petitioner explains that [REDACTED] is the company's Vice President, and is not the same person as [REDACTED] who is the Advertising Manager. The petitioner contends that, as a new office, its organizational structure can change based upon the needs of the company and did not need to be exactly described, as the regulations require only a proposed organizational chart. The petitioner asserts that the Service's conclusion that its organizational structure is "top heavy" is too subjective. The petitioner asserts that the regulations do not limit the L visa to large corporations, and cites to *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) and *Johnson-Laird Inc. v. INS*, 537 F. Supp. 52 (D. Or. 1981). With regards to the question of who was providing the goods and services of the United States operations, the petitioner asserts that it is an advertising and marketing company, and asserts that USCIS misunderstands the size of its business.

With regards to the qualifying relationship, the petitioner references an erroneous stock certificate that was issued for 1000 shares when the correct amount is 500 shares. The petitioner then discusses the signature on the stock certificate and states that the president's signature appears on the corrected stock certificate and is the only required signature per the company's by-laws. The petitioner states that [REDACTED] assumed that [REDACTED] and [REDACTED] are the owners of the company as they are the president and vice president, but that he had no actual knowledge of the company's ownership.

In support of the motion to reopen and reconsider, the petitioner submits the following documents:

1. Financial documents for the U.S. company (previously submitted);
2. The petitioner's lease (previously submitted);
3. The foreign entity's 2009 Profit and Loss Statement (previously submitted);
4. The foreign entity's organizational chart (previously submitted);
5. Affidavit from [REDACTED] dated June 8, 2011, attesting that the foreign entity owns 100% of the shares of the U.S. company (previously submitted);
6. The petitioner's stock certificate number 1 issued to the foreign entity for 500 shares (previously submitted);
7. The petitioner's unsigned and uncertified 2010 IRS Form 1120, U.S. Corporation Income Tax Return (new submission); and
8. The petitioner's 2010 IRS Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in U.S. Trade or Business (new submission).

Here, the petitioner repeatedly asserts that it is a new office in an attempt to overcome the AAO's finding that its description of its claimed organizational structure and staffing is not credible. The petitioner contends that, as a new office, its organizational structure can change based upon the needs of the company and did not need to be exactly described, as the regulations require only a proposed organizational chart. The petitioner also contends that that USCIS's conclusion that its organizational structure is "top heavy" is too subjective.

On motion, the petitioner explains it employs [REDACTED] as its Vice President, and that he is not the same person as [REDACTED] who is the Advertising Manager. A review of the evidence in the record, particularly the petitioner's organizational chart and position descriptions for its U.S. employees, reflects that the petitioner claimed only one employee named [REDACTED] and did not claim to employ a Vice President or a second director position. The petitioner's evidence depicted [REDACTED] as the sole director. The petitioner failed to explain why its claimed employment of [REDACTED] could be considered a fact that was not available and could not have been presented in the previous proceeding. Moreover, the petitioner failed to provide any affidavits or other documentary evidence to support its claimed employment of [REDACTED] in addition to [REDACTED].

The petitioner's assertions are unpersuasive and are insufficient to overcome the AAO's decision. In dismissing its appeal, the AAO found that the petitioner's description of the beneficiary's job duties were vague and overlapped with other employees' listed duties. The AAO also found that the petitioner's claimed organizational structure and staffing lacked credibility based upon a variety of factors, including the lack of credible position descriptions for all employees, the duplicative nature of the employees' duties, the petitioner's "top heavy" structure (specifically, six or seven managerial and executive employees within a nine person company), and the lack of lower level employees to provide the goods and services of the U.S. operations. On motion, the petitioner vaguely references the AAO's decision and then cites the regulations pertaining to new offices and the term "managerial capacity," but fails to articulate how the AAO misapplied the regulations to the petitioner's evidence. The petitioner failed to establish that the beneficiary will be employed primarily in a managerial capacity.

While the AAO acknowledges that the petitioner is a new office, the petitioner is nevertheless required to submit a credible, good faith description of its proposed organizational structure at the time of filing. 8 C.F.R. § 214.2(l)(3)(v)(C)(I). A petitioner may not knowingly misrepresent its proposed organizational structure, and then rely on its status as a new office to explain its misrepresentations. See section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182(a)(6)(c).

On motion, the petitioner asserts that the regulations do not limit the L visa to large corporations, and cites to *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) and *Johnson-Laird Inc. v. INS*, 537 F. Supp. 52 (D. Or. 1981). However, other than summarizing the regulations and case law pertaining to the size of the company, the petitioner again fails to articulate how the AAO misapplied the regulations and case law to the petitioner's evidence. Regardless, the AAO emphasizes that its holding is not based on the size of the petitioning entity, but rather, the petitioner's failure to provide complete, credible descriptions of its organizational structure and staffing, and ultimately, its failure to establish that the petitioner would employ the beneficiary in a primarily managerial or executive capacity.

Furthermore, on motion, the petitioner asserts that one version of its share certificate number 1 was erroneous, and that the other version of stock certificate number 1 submitted in response to the RFE is accurate. The petitioner also submits new documents to support its claimed qualifying relationship to the foreign entity, including its unsigned and uncertified 2010 IRS Forms 1120 and 5472, which show that the foreign entity owns 100% of the U.S. company. The petitioner did not submit any additional documentation to corroborate this statement, nor is there any evidence that the submitted tax returns were actually filed with the IRS. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591 (BIA 1988).

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 reconsider 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, the petitioner's previously submitted arguments based on the Service Center director's original decision cannot be considered to 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 the petitioner'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 sufficient reasons, supported by pertinent precedent decisions, to warrant the reconsideration of the AAO's decision issued on December 31, 2012. Here, the petitioner has not adequately addressed the deficiencies and inconsistencies presented in the AAO's dismissal of the appeal and therefore has not overcome those deficiencies or the AAO's finding that the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity or that it has a qualifying relationship with the foreign entity.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the AAO's decision will be affirmed.

ORDER: The AAO's decision dated December 31, 2012 is affirmed.