



U.S. Citizenship
and Immigration
Services

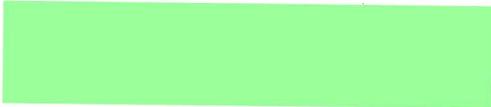
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DATE: **AUG 22 2013** Office: VERMONT SERVICE CENTER



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and dismissed the petitioner's two subsequent motions. The petitioner then filed an appeal with the Administrative Appeals Office (AAO), and, on June 27, 2011, the AAO dismissed the appeal. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision, and, on May 24, 2013, the AAO dismissed the motions. The matter is now before the AAO on a second motion to reconsider, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ 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 2010, engages in the advertising and marketing technology business. It claims to be a subsidiary of [REDACTED], located in Venezuela. The petitioner seeks to employ the beneficiary as the chief executive officer (CEO) of its new office in the United States for a period of one year.

The director denied the petition on June 27, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the petitioner's proposed organizational structure did not indicate who was providing the goods and services of the operations. The director concluded that the managers or executives would likely be providing the goods and services of the operations.

The petitioner filed a motion to reopen, which the director dismissed as untimely. The petitioner then filed a motion to reconsider the director's decision, which the director dismissed for failing to meet the regulatory requirements. The petitioner subsequently filed an appeal to the AAO.

On December 19, 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 petitioner's descriptions of the beneficiary's proposed duties in the United States were vague and overly broad. The AAO also found that the petitioner's claimed organizational structure, including the position descriptions for the proposed U.S. employees, was not credible. Specifically, the AAO found that the petitioner's claim that the beneficiary will directly supervise the Advertising Manager, [REDACTED] 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] as the only director.

The AAO found that the petitioner failed to provide position descriptions for the Vice President, Chief Financial Officer (CFO), Secretary, and Advertising Manager. The AAO found that many of the described job duties for the U.S. employees were similar to each other. The AAO concluded that the petitioner's failure to provide clear, complete position descriptions for all its U.S. staff was critical and prohibited the AAO from assessing the credibility of the beneficiary's claimed job duties in the context of the petitioner's entire operations. The AAO also concluded that the petitioner failed to establish that the duties of the claimed

managerial employees were truly managerial in nature, and that the U.S. operation could realistically support the beneficiary in a primarily executive or managerial role.

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 two different versions of stock certificate number 1 purportedly issued to the foreign entity, one of which exceeded the maximum number of shares the corporation was authorized to issue. The AAO also determined that the emails between [REDACTED] lacked probative value, considering the dates of the emails and the evidence in the record reflecting that [REDACTED] did not have any ownership interest in the foreign entity.

The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision, and, on May 24, 2013, the AAO dismissed both motions concluding that the petitioner failed to (1) present new evidence or facts that were not available and could not have been discovered or presented in the previous proceeding, and (2) establish that the AAO's decision was incorrect based on the evidence of record at the time of the decision.

The petitioner subsequently filed the instant motion to reconsider the AAO's decision of May 24, 2013. On motion, counsel for the petitioner submits a brief which includes a description of the beneficiary's proposed duties that is identical in substantive content to the descriptions previously submitted and considered in the AAO's decision to dismiss the petitioner's appeal on December 19, 2012, and subsequent motion on May 24, 2013. The petitioner does not address the issue of its qualifying relationship with the foreign entity.

Upon review, the AAO finds that the petitioner's assertions do not adequately support the motion to reconsider. The regulation at 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.

In other words, the purpose of a motion to reconsider is to contest the correctness of the original decision based on the previously established factual record. A motion to reconsider based on a legal argument that could have been raised earlier in the proceedings will be denied. *See Matter of Medrano*, 20 I&N Dec. 216, 219-20 (BIA 1990, 1991). The "reasons for reconsideration" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached by the AAO in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The instant motion consists solely of the petitioner's brief dated June 18, 2013, which is almost identical to the brief submitted with the previous motion. There is no reference made to the findings made in the AAO's decision and the specific deficiencies remarked upon therein, no new facts provided to support a motion to reopen, and no reasons stated for reconsideration.

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 May 24, 2013. In the current proceeding, the petitioner has not adequately addressed the grounds stated for dismissal of the previous motion or the appeal.

In addition, 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 also be dismissed for this 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. The motion will be dismissed.

ORDER: The motion is dismissed.