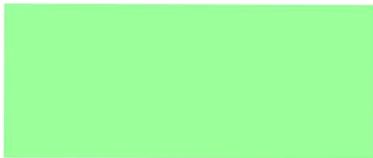


(b)(6)

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

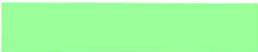


U.S. Citizenship
and Immigration
Services



DATE: **DEC 23 2013**

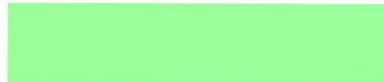
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

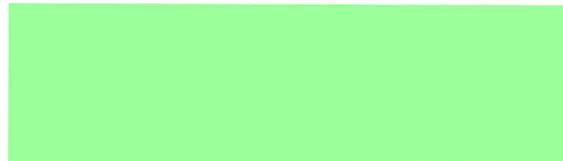
Petitioner:

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:

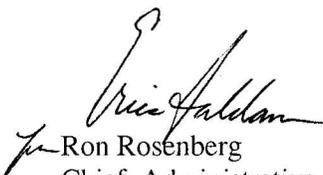


INSTRUCTIONS:

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, California Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner subsequently filed a motion to reopen and reconsider. The AAO granted the motion to reconsider, and affirmed its previous decision. . The matter is now before the AAO on a motion to reconsider. The motion will be granted and the underlying petition will remain denied.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its Managing Partner and Chief Executive Officer 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 partnership doing business in the State of California. The petitioner is engaged in the operation of a retail variety store. The beneficiary was previously granted one year as an L-1A nonimmigrant intracompany transferee in order to open a new office in the United States. The petitioner now seeks to extend the beneficiary's employment in the United States for three additional years.¹

The director denied the petition, concluding that the petitioner had failed to demonstrate that the beneficiary will be employed in a qualifying managerial or executive capacity. The director noted that the beneficiary's duty description was overly vague and did not provide information regarding his actual day-to-day duties. The director also reasoned that the organizational structure of the petitioner was not sufficient to elevate the beneficiary to a position higher than that of a first-line supervisor of non-professional employees.

The petitioner subsequently filed an appeal, which the AAO dismissed. In dismissing the appeal, the AAO emphasized the vague nature of the position description submitted, concluding that it failed to provide any meaningful insight into the beneficiary's actual daily activities. Further, the AAO declined to consider additional duties submitted for the first time on appeal, as the petitioner had failed to provide this evidence in response to a request for evidence (RFE) issued prior to adjudication of the petition. The AAO further noted that there were inconsistencies in the record with respect to the number of employees working for the petitioner and the date on which it commenced operations. In sum, after considering the totality of the evidence, the AAO found that the petitioner's organizational structure was not sufficient to elevate the beneficiary to a position higher than a first line supervisor of non-professional employees. Lastly, beyond the decision of the director, the AAO concluded that the petitioner had not established that it had a qualifying relationship with the foreign employer. The AAO referenced the lack of evidence on the record to establish that the petitioner existed as a legal entity in the State of California.

As noted, the petitioner filed a motion to reopen and reconsider. The AAO granted the motion to reconsider in order to consider additional evidence pertaining to the petitioner's claimed qualifying relationship with the foreign entity, but affirmed its previous adverse determination. In affirming the decision, this office noted that Indian tax documentation submitted by the petitioner did not reflect that the beneficiary had a controlling 50% interest in the foreign employer as asserted by the petitioner, but rather indicated that the foreign employer was 50% controlled by a different individual, [REDACTED]. The AAO also affirmed its

¹ The AAO notes that a beneficiary's stay may only be extended for up to two years as an L-1A nonimmigrant intracompany transferee. *See* 8 C.F.R. § 214.2(l)(15)(ii).

determination that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity after determining that the evidence submitted did not meet the requirements of a motion to reopen or reconsider. Specifically, the AAO observed that the petitioner's motion did not include references to pertinent law, precedents or agency or evidence that could be considered new. The AAO declined to accept new job duties submitted for the beneficiary on motion, since the petitioner had already failed to submit these duties in response to the director's request for evidence (RFE). Further, this office noted that, even when the duties were considered, that they are overly vague and failed to convey the beneficiary's actual day-to-day activities. Lastly, this office concluded that the petitioner had not established that the beneficiary qualified as a function manager as asserted, and found that the AAO had not improperly considered the size of the petitioner's business in dismissing the appeal.

The petitioner now files a motion to reconsider in response to the AAO's decision dated June 20, 2013.

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 purpose of a motion to reopen 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 documented sufficient reasons, supported by statute, regulations and pertinent precedent decisions, to warrant the reconsideration of the AAO's most recent decision.

On motion, counsel asserts that the beneficiary "changed his name many years ago," from [REDACTED]. As a result, counsel states that the foreign employer's Indian tax documentation indicates that the foreign employer is 50% owned and controlled by [REDACTED] who is in fact the beneficiary. The petitioner submits a "name change affidavit" and an affidavit from the three other partners of the foreign employer attesting to the fact that the beneficiary owns and controls 50% interest in the company. Counsel contends that the two companies are affiliates based upon the beneficiary's 90% controlling interest in the petitioner and his 50% controlling interest in the foreign employer.

After a review of this issue and consideration of the additional evidence submitted on motion, the AAO will withdraw its previous determination that the petitioner failed to establish that it has a qualifying relationship with the foreign employer. This determination was based on the petitioner's failure to support its claim that the beneficiary holds a controlling interest in the foreign entity. As observed, the foreign entity's corporate documentation reflects ownership by [REDACTED].

The petitioner has submitted sufficient evidence on motion to address this perceived discrepancy in the foreign employer's ownership. The petitioner has submitted an affidavit dated January 12, 1990 indicating that the beneficiary is known both as [REDACTED]. Additionally, the petitioner has submitted an affidavit from the partners of the foreign employer, [REDACTED] within which the partners attest that the beneficiary has a controlling 50% interest in the foreign employer. The aforementioned affidavit states, "at the time of forming a partnership, it was principally agreed by and between the parties that complete control, management, and final decision power about the partnership affairs shall vest in [REDACTED] [the beneficiary]." Based on this evidence submitted in support of the current motion, the petitioner has established by a preponderance of the evidence that the beneficiary owns and controls both the petitioner and the foreign employer and that the entities are affiliates as defined by the regulations.

However, the petitioner has not submitted evidence on motion to warrant reconsideration of the AAO's determination that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

Counsel has not stated sufficient reasons for reconsideration supported by pertinent citations to statutes, regulations, or precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. In fact, counsel has merely repeated the same arguments and duties previously submitted on appeal, and on motion, which have already been addressed by this office in its two prior decisions. Counsel fails to articulate a specific error on the part of the AAO in its previous decisions, or specifically address its reasoning in these decisions with respect to the beneficiary's proposed qualifying managerial or executive capacity in the United States. For example, the AAO emphasized in both prior decisions that the duty description submitted for the beneficiary was overly vague and that it failed to convey the beneficiary's actual day-to-day activities. However, counsel merely resubmits these duties again on motion. Given the purpose of the motion to reconsider, the AAO will not conduct another de novo review of the entire record. Therefore, the petition will remain denied based on the petitioner's failure to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

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. The AAO's determination that the petitioner failed to establish a qualifying relationship with the foreign entity is withdrawn. As the petitioner has not established on motion that it will employ the beneficiary in a qualifying managerial or executive capacity, the prior decisions of the AAO and director are affirmed and the petition will remain denied.

ORDER: The motion to reconsider is granted. The underlying petition is denied.