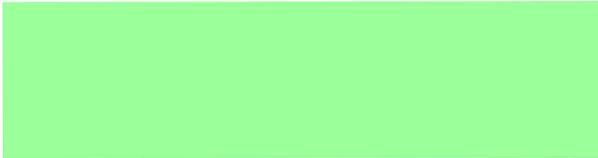


(b)(6)

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

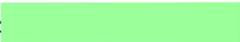


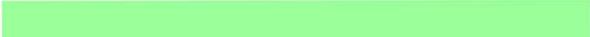
U.S. Citizenship
and Immigration
Services



DATE: **FEB 01 2013**

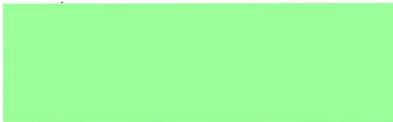
Office: CALIFORNIA SERVICE CENTER

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 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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must 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

www.uscis.gov

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's subsequently filed appeal. The matter is now before the AAO pursuant to a motion to reopen and reconsider the decision. The AAO will dismiss the motion.

The petitioner filed a nonimmigrant petition seeking to extend the beneficiary's employment as an L-1A 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 California limited liability company, states that it is engaged in the manufacture and sale of health supplement products. It claims to be a subsidiary of [REDACTED] located in Shenzhen, China. The beneficiary was previously granted one year in L-1A classification in order to serve as president of the petitioner, a new office in the United States, and the petitioner now seeks to extend the beneficiary's status for two additional years.

The director denied the petition on January 28, 2011 concluding that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive capacity. On March 2, 2011, the petitioner filed an appeal maintaining only that the director did not properly understand the nature of the business, and in turn, did not have a full understanding of how the beneficiary qualified as an L-1A manager. Counsel indicated on the Form I-290B, Notice of Appeal or Motion that he would file an appellate brief and/or additional evidence directly to the AAO within 30 days.

The AAO summarily dismissed the petitioner's appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v) in a decision issued on March 29, 2012. The AAO emphasized that counsel's brief statement on the Form I-290B failed to identify a specific erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Further, the AAO found that the record indicated that the petitioner did not in fact file a brief or supplemental evidence within the allowed timeframe.

The matter is now before the AAO on a motion to reopen and reconsider. Counsel contends on motion that he did indeed submit a brief on appeal, makes a declaration to this effect, and asserts that it was therefore unfair for the AAO to summarily dismiss the petitioner's appeal without considering this brief. Counsel submits an appellate brief and claims to have mailed it on March 14, 2011 to the same location at which he filed the appeal. The aforementioned appeal brief offers various arguments as to how the director erred in concluding that the petitioner would not employ the beneficiary in a qualifying managerial or executive capacity.

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.

Here, the petitioner does not submit any new evidence, nor has it established that the AAO's decision to summarily 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, a review in the case of a motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. A motion for reconsideration 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, counsel's arguments based on the Service Center director's original decision cannot be considered "new" facts or provide a reason for reconsideration of the AAO's proper summary dismissal of the appeal for failure to specify an erroneous conclusion of fact or law.

Rather, 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 issued on March 29, 2012. For the reasons set forth below, petitioner has not sufficiently documented new facts, sufficient reasons, or precedent decisions to warrant the reconsideration of the AAO's previous summary dismissal.

Counsel declares on motion that he submitted an appeal brief "to the location where I filed the appeal" on March 14, 2011 following the filing of the Form I-290B with the California Service Center on March 1, 2011, and now offers the same appeal brief with this motion to reopen or reconsider. The AAO notes that the director's decision dated January 28, 2011 clearly instructed the petitioner as follows:

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary request additional time to submit a brief. Any brief, written statement or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, D.C. 20529-2090

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).

Any additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office (AAO), and must be accompanied by a written explanation for the need for additional time.

Counsel claims to have submitted the appeal brief directly with the California Service Center. However, as the instructions clearly indicate above, since the brief was submitted approximately two weeks after the submittal of the original appeal, it should have been sent directly to the AAO. Further, even if the appeal were found to have been submitted to the service center, counsel presents no documentary evidence beyond his own declarations to establish that a timely appeal brief was submitted in support of the Form I-290B Notice of Appeal of Motion to any location. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As such, counsel's contention that the AAO erroneously summarily dismissed the appeal is not persuasive. The AAO decision was based upon the record before it and the record reflected that no appeal brief had been properly submitted to the AAO as of the date of its decision. Additionally, the AAO cannot properly consider whether said brief was timely submitted to the Service Center as claimed, as no documentary evidence to establish this has been presented. Therefore, petitioner has not sufficiently documented new facts, sufficient reasons, or precedent decisions to warrant the reconsideration of the AAO's previous summary dismissal. The AAO properly dismissed the appeal based on the petitioner's failure to identify specifically an erroneous conclusion of law or statement of fact for the appeal consistent with 8 C.F.R. §103.3(a)(1)(v). Counsel has presented nothing with the motion to warrant the reconsideration of this proper decision. Rather counsel has indirectly conceded that he mailed the appellate brief to the wrong address, and has provided no documentary evidence to even establish this assertion.

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.

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 be dismissed for this additional reason.

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.