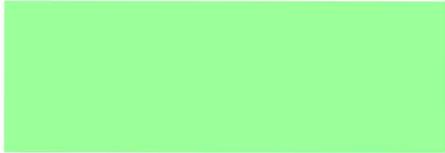




U.S. Citizenship
and Immigration
Services

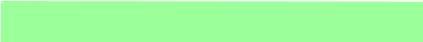
(b)(6)



DATE: **JAN 22 2013**

Office: VERMONT SERVICE CENTER

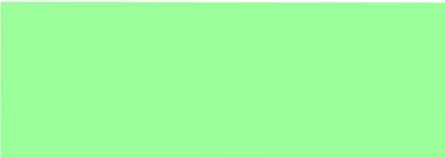
FILE: 

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:

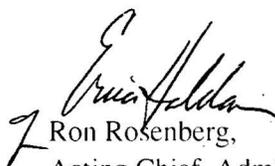


INSTRUCTIONS:

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,


7 Ron Rosenberg,

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner filed this nonimmigrant visa 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 Texas corporation established in August 2008, states that it intends to engage in the sale of gasoline, automotive, and household items. It claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary would be employed in a primarily managerial or executive capacity, or that the U.S. entity would support a managerial or executive position within one year of commencing operations in the United States; (2) that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity; and (3) that the petitioner has secured sufficient physical premises to house the new office.

The petitioner appealed the director's decision to the AAO. Upon thorough analysis of the record of evidence, the AAO concluded that the director's adverse findings were warranted and dismissed the appeal. The AAO also found the record lacked evidence regarding the size of the United States investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2) and dismissed the appeal for this additional reason.

Counsel moves to reopen and reconsider the decision of the AAO. In support of the motion, counsel submits the same brief and evidence previously submitted with the appeal. While counsel acknowledges the AAO's adverse decision dated September 26, 2011, the brief addresses solely the specific findings made in the service center director's decision dated June 4, 2009.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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."

Furthermore, 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.

On motion, counsel submits the same evidence and arguments as submitted on appeal, which were already thoroughly addressed in the AAO's 16-page decision. 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 Therefore, the motion contains no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2), nor is it properly supported by affidavits or documentary evidence as required by the regulations.

Counsel’s support brief also does not directly address the AAO’s decision and the specific findings made therein. It states no specific reasons for reconsideration, and is not supported by any pertinent precedent decisions or a claim that the decision was based on an incorrect application of law or USCIS policy. Consequently, the petitioner has also failed to meet the requirements for reconsideration under 8 C.F.R. § 103.5(a)(3).

Finally, 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 as discussed above, it will 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.

It should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a 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 reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

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).