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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: JUL 0 8 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as a 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, states that it operates a dental services business. It claims to be a subsidiary of , located in Venezuela. The beneficiary was previously granted L-1A classification from September 20, 2006 until January 31, 2008 in order to open a new office in the United States. She was subsequently granted a second period of L-1A classification valid from March 17, 2008 until November 15, 2008. The approval of this petition was revoked on notice on August 29, 2009 after the U.S. Consulate in Caracas returned the petition to the service center for additional review. On September 24, 2008, the petitioner filed the current petition to request an extension of the beneficiary's L-1A status through November 15, 2010.

The director initially approved the petition and granted the beneficiary the requested two-year extension of stay. On September 21, 2010, the director issued a notice of intent to revoke ("NOIR"), noting the revocation of the previously approved L-1A petition. The director, after reviewing the petitioner's rebuttal evidence, revoked the approval of the petition based on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the foreign employer, and (2) that it has been "doing business" as defined in the regulations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. The AAO dismissed the appeal, finding that the employer failed to establish a qualifying relationship with the beneficiary's foreign employer. The AAO noted inconsistencies in issuance of shares. The AAO further noted that the claimed share issuance reflects that the petitioning entity is owned by five individuals, and no one individual owns a majority interest in the company. The petitioner failed to establish that the five members were bound together by voting agreements or proxies such that they could be considered a single entity. Furthermore, the AAO found that the petitioner was not doing business, as at the time of filing, the petitioner was not engaged in the provision of dental services but in the process of building its dental office. The AAO found that the petitioner's construction activity for its own office did not constitute the regular, systematic, and continuous provision of goods and/or services.

The matter is now before the AAO on a combined motion to reopen and motion to reconsider. On motion, the petitioner objects to the director's decision to deny the petition, asserting that group of three individuals constitutes a single entity. The petitioner further reasserts its contention that the construction of the dental office constitutes "doing business" for L-1A purposes.

The petitioner's assertions do not satisfy the requirements of either a motion to reopen or a motion to reconsider. As a preliminary matter, the AAO emphasizes that the purpose of a motion 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 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 prior decision.

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." 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 petitioner submits the following evidence in support of the motion: (1) the petitioner's stock certificates and articles of incorporation demonstrating ownership of the time of filing; (2) the foreign employer's stock certificates and articles of incorporation; (3) the foreign entity's financial statements; (4) an affidavit of one of the petitioner's board members; (5) lease; (6) invoices, construction contracts, and photos of the clinic; (7) 2008 IRS Forms W-2 and 1099; (8) affidavit of the beneficiary; and (9) IRS Forms 941 and payroll records.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered *new* under 8 C.F.R. § 103.5(a)(2). The evidence submitted was either previously available and could have been discovered or presented in the previous proceeding, or it post-dates the filing of the petition.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(l). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

In addition, the motion does not satisfy the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(2) 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.

Therefore, to merit reconsideration of the AAO's decision dated February 21, 2013, the petitioner must both (1) specifically cite laws, regulations, precedent decisions, and/or binding U.S. Citizenship and Immigration Service (USCIS) policies that the petitioner believes that the AAO misapplied in deciding to dismiss the appeal; and (2) articulate how those standards cited on motion were so misapplied to the evidence before the AAO as to result in a dismissal that should not have been rendered.

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[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 RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

On motion, the petitioner primarily reasserts arguments made on appeal, raises no specific objections to the AAO's dismissal of the appeal, and has not otherwise satisfied the requirements of a motion to reconsider. A review of the record and the adverse decision indicates that the AAO properly applied the statute and regulations to the petitioner's case. The petitioner does not specify why the AAO's decision was based on an incorrect application of law or USCIS policy. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the applicable regulations.

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. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." 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.