**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**

(b)(6)

DATE: MAR 2 9 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:

SELF-REPRESENTED

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, denied the petition for a nonimmigrant visa. The petitioner has filed a total of three appeals and four motions with the Administrative Appeals Office (AAO). Most recently, the AAO dismissed the petitioner's motion to reopen and reconsider in a decision dated February 7, 2012. The matter is once again before the AAO on a motion to reconsider.

The petitioner seeks to extend the employment of the beneficiary as its vice president as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of New Jersey, claims to be engaged in the wholesale of general merchandise and states that it is a subsidiary of located in Ahmedabad, India. The beneficiary was initially granted a one-year period of stay in the United States in L-1A status in order to open a new office, and the petitioner seeks to extend the beneficiary's stay.

The director denied the petition on February 24, 2004, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The AAO summarily dismissed the petitioner's appeal on February 1, 2006, and subsequently granted a motion to reopen in order to consider a timely filed appellate brief that had not been incorporated into the record prior to the AAO's initial decision. The AAO issued a 14-page decision affirming the denial of the petition and dismissal of the appeal on May 17, 2007. The petitioner subsequently filed an appeal on June 14, 2007. The AAO rejected the petitioner's second appeal as improperly filed on December 4, 2007, noting that the AAO does not exercise appellate jurisdiction over AAO decisions. In its decision, the AAO reviewed the petitioner's appeal and found that it did not meet the requirements for a motion to reopen or reconsider. A subsequent motion, filed on January 4, 2008, was reviewed by the AAO and dismissed in a decision dated July 7, 2008. The AAO rejected the petitioner's subsequent appeal on November 25, 2008, again noting that the AAO does not exercise appellate jurisdiction over AAO decisions. The AAO dismissed the petitioner's subsequent motions to reopen and reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a)(4), based on the petitioner's failure to satisfy applicable filing requirements.

The petitioner filed the instant motion to reconsider on March 8, 2012. The petitioner's motion consisted of the Form I-290B, Notice of Appeal or Motion, and a brief stating, in pertinent part, the following:

> 2.03 CIS in a predetermined decision to deny, resorts to violating its own principles. CIS in the subject decision at page 4 states ...." Therefore, to merit reconsideration .....(2) **ARTICULATE** (emphasis added) how the 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." Now, please refer to the previous decision dated October 19, 2009 . . .
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> (d) CIS again, in the subject decision at page 4 states '.....Therefore, to merit reconsideration.....the petitioner must both (1) specifically cite laws, regulations, precedent decisions, and/or binding U.S. Citizenship and Immigration Service (USICS) policies....' A review of the facts/evidence on record will review that all of these have been cited. The laws and regulations under which the job duties of the beneficiary merit eligibility as managerial have been cited with every job function described and submitted with the

> petition and incorporated in the briefs submitted later. However, CIS has ignored all of them without giving any reason all throughout. The binding USCIS policy is NOT to re-adjudicate previously approved petition or the eligibility of the job duties as managerial. But CIS, as explained in( c) above, has violated the same without any just cause or reason. Precedent decisions have been quoted as will be noticed from the evidence in the record. BUT again CIS has ignored all of them without just cause or even assigning any reason for such a violation . . . .
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> [*sic*]

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 the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). 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 reason.

Further, 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. . . .

This regulation is supplemented by the instructions on the Form I-290B, Notice of Appeal or Motion, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions.[1] With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

> **Motion to Reconsider:** The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

Therefore, to merit reconsideration of the AAO's most recent decision, the petitioner must both: (1) state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and (2) specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believes that the AAO misapplied in it its most recent decision.

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[1] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

> [E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

Here, the petitioner makes two only vague references to the AAO's most recent decision dated February 7, 2012. Other than these two vague references, the petitioner fails to state specific reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy. In particular, in the AAO decision dated February 7, 2012, the AAO dismissed the petitioner's motion to reopen and reconsider on three specific grounds: (1) the motion was not accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of judicial proceedings; (2) the motion to reopen was not accompanied by new facts and supported by affidavits or other documentary evidence; and (3) the petitioner's assertions on Form I-290B were insufficient to support a motion to reconsider. The petitioner fails to specifically address any of the above three findings in the instant motion to reconsider.

In the instant matter, the petitioner fails to establish that the AAO erred in finding that the prior motion was not accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of judicial proceedings. The petitioner neither claims that the AAO erred in requiring such a statement, nor that the AAO erred in finding that such a statement was not provided. As discussed *supra*, the petitioner still does not submit such a statement with the instant motion.

The petitioner also fails to establish that the AAO erred in finding that the prior motion to reopen was not accompanied by new facts and supported by affidavits or other documentary evidence. The petitioner neither claims that the AAO erred in requiring such evidence, nor claims that the AAO erred in finding that no new facts were provided in the prior motion.

Finally, the petitioner fails to establish that the AAO erred in finding that the petitioner's assertions on Form I-290B, dated November 16, 2009, were insufficient to support a motion to reconsider. In the February 7, 2012 decision, the AAO found that the petitioner made vague references to policies, regulations and the statute without specifically citing any authorities, and made broad assertions regarding abuses of discretion and improper assessments of the evidence without articulating how such standards were misapplied to the petitioner's evidence. With the instant motion, the petitioner fails to establish how this particular conclusion was erroneous. Rather, the petitioner generally asserts that USCIS "ignored" citations and assertions "placed on record earlier," without specifically identifying which particular citations and assertions were provided on the prior motion and purportedly disregarded by the AAO.

The AAO emphasizes that the requirements for a motion to reconsider are specific. 8 C.F.R. § 103.5(a)(3) requires a motion to reconsider to state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the prior decision was based on an incorrect application of law or Service policy. Such explanation and supporting evidence must be submitted on or with Form I-290B. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). As discussed in the February 7, 2012 decision, the AAO found the petitioner's prior motion to be insufficient because the petitioner's prior motion consisted of only vague statements on Form I-290B, as counsel's brief submitted on January 10, 2010 did not accompany Form I-290B and therefore could not be considered with the motion. The petitioner failed to explain how the AAO misapplied the law or policy in this respect.

The AAO notes that the petitioner has made similar claims in prior motions and the AAO has addressed these claims in prior decisions. The petitioner appears to be requesting reconsideration of every decision made by

the director and the AAO to date. The petitioner cannot generally request reconsideration of every decision made by the director and the AAO to date. 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, a review in the case of a motion to reconsider is strictly limited to an examination of any purported misapplication of law of USCIS policy *in the most recent decision*. The AAO previously conducted a *de novo* review of the entire record of proceeding when it reopened the matter to consider the petitioner's appellate brief in its May 17, 2007 decision. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per every petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated. The petitioner persists in filing motions and improperly filed appeals reiterating arguments that have been addressed and found to be insufficient in prior AAO decisions.

For the foregoing reasons, the instant motion does not meet the requirements of a motion to reconsider. The motion fails to establish that the AAO's decision dated February 7, 2012 dismissing the motion was in error, as required by 8 C.F.R. § 103.5(a)(3).

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, 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.