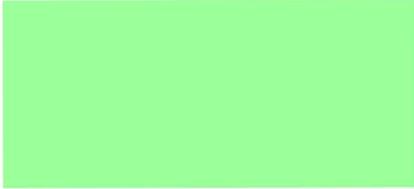


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

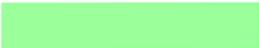


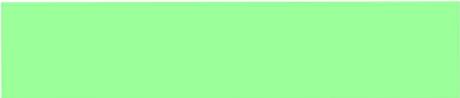
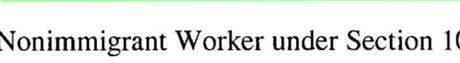
U.S. Citizenship
and Immigration
Services



Date: **MAY 14 2013**

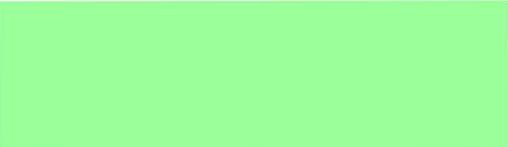
Office: VERMONT SERVICE CENTER

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, denied 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 the 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 New Jersey corporation, states that it is an import/export firm. It claims to be a branch office of [REDACTED] located in Korangi, Pakistan. The petitioner seeks to employ the beneficiary as its President for three additional years.

The director denied the petition concluding that the record does not establish that the beneficiary has been or will be employed in an executive capacity; that the business is financially viable; or that the business is paying any wages as stated. In denying the petition, the director noted the petitioner's failure to submit any evidence that the beneficiary is acting in an executive capacity as specifically requested in a request for evidence (RFE). The director also found inconsistent evidence regarding the number of employees as stated by the petitioner, as well as wages paid to those employees.

The petitioner subsequently filed an appeal. The AAO dismissed the appeal, finding that the appeal consisted primarily of evidence that had previously been requested in the director's RFE. The AAO determined that where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Furthermore, the AAO found that the petitioner failed to address the conclusions of law or statements of fact made by the director in his denial regarding the financial viability of the business generally. Instead, the petitioner addressed an issue not raised in the director's denial, specifically, whether the petitioning entity has the ability to pay the beneficiary's proffered wage.

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, stating:

The Beneficiary could not join the Petitioner Organization before June 2010, which was the time for renewal of his visa, therefore the documents requested by the Service on July 22, 2010 in support of his Petition for Extension of Visa (I-129 Petition) could not be provided by the Petitioner and the Service's demand to provide these documents is not based on law and justice.

The petitioner further asserts that the USCIS erred "in not considering the shortage in time and delay in issuing visa by American Consulate in Pakistan until April 12, 2010." Counsel further asserts that the service center director "should have taken time factor into consideration," in light of the fact that the beneficiary "did not even have three months after entering USA to manage the affairs of business in the US."

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: a copy of a previously submitted accountant's report; copies of the petitioner's tax returns for 2009 and 2010, along with IRS Form 1099's; a lease for a new business location with a commencement date of October 2012; and copies of bank statements.

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)(1). 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). The motion fails to establish that the decision to deny the petition and subsequent appeal was incorrect based on the evidence of record at the time of the initial decision, as required by 8 C.F.R. § 103.5(a)(3).

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 September 7, 2012, 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

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).

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.

On motion, the petitioner primarily references the service center's initial decision to deny the petition, 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 regulation.

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.