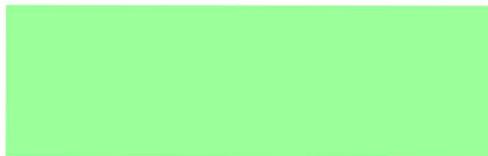




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 24 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 filed an appeal with the Administrative Appeals Office (AAO), which the AAO dismissed. The petitioner now files the instant motion to reopen and reconsider.

The petitioner filed this nonimmigrant 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 Florida corporation established in 2010, engages in the advertising and marketing technology business. It claims to be a subsidiary of [REDACTED], located in Venezuela. The petitioner seeks to employ the beneficiary as the chief executive officer (CEO) of its new office in the United States for a period of one year.

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. In denying the petition, the director found that the petitioner's proposed organizational structure did not indicate who was providing the goods and services of the operations. The director concluded that the managers or executives would likely be providing the goods and services of the operations.

The petitioner filed a motion to reopen, which the director dismissed as untimely. The petitioner then filed a motion to reconsider the director's decision, which the director dismissed for failing to meet the regulatory requirements. The petitioner subsequently filed an appeal to the AAO.

The AAO affirmed the director's decision to deny the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In its decision, the AAO found that the petitioner's descriptions of the beneficiary's proposed duties in the United States were vague and overly broad. The AAO also found that the petitioner's claimed organizational structure and staffing, including the position descriptions for the U.S. employees, was not credible. Specifically, the AAO found that the petitioner's claim that the beneficiary will directly supervise the Advertising Manager, [REDACTED] was not credible because the evidence in the record indicated that [REDACTED] is the petitioner's Vice President, Secretary, and one of its two Directors. The AAO observed that the petitioner's organizational chart and descriptions of its U.S. staff did not mention the position of Vice President/Secretary, occupied by [REDACTED] and depicted [REDACTED] as the only director.

The AAO found that the petitioner failed to provide position descriptions for the Vice President, Chief Financial Officer (CFO), Secretary, and Advertising Manager. The AAO found that many of the described job duties for the U.S. employees were similar to each other. The AAO concluded that the petitioner's failure to provide clear, complete position descriptions for all its U.S. staff was critical and prohibited the AAO from assessing the credibility of the beneficiary's claimed job duties in the context of the petitioner's entire operations. The AAO also concluded that the petitioner failed to establish that the duties of the claimed managerial employees were truly managerial in nature, and that the U.S. operation could realistically support the beneficiary in a primarily executive or managerial role.

The AAO found that the petitioner failed to establish a qualifying relationship to [REDACTED] (the "foreign entity"). The AAO observed that the petitioner submitted two different versions of stock

certificate number 1 purportedly issued to the foreign entity, one of which exceeded the maximum number of shares the corporation was authorized to issue. The AAO also determined that the emails between [REDACTED] and [REDACTED], and the letter from [REDACTED] lacked probative value, considering the dates of the emails and the evidence in the record reflecting that [REDACTED] did not have any ownership interest in the foreign entity.

The petitioner filed the instant motion to reopen and reconsider. On motion, the petitioner disputes the AAO's finding that its organizational chart and claimed organizational structure was not credible. The petitioner explains that [REDACTED] is the Vice President of the petitioner, and is not the same person as [REDACTED], who is the Advertising Manager subordinate to the beneficiary. The petitioner acknowledges that it did not submit position descriptions for the Vice President and CFO, and submits those for the first time on motion. The petitioner contends that, as a new office, its organizational structure can change based upon the needs of the company and did not need to be exactly described, as the regulations require only a proposed organizational chart. The petitioner asserts that the Service's conclusion that its organizational structure is "top heavy" is too subjective. The petitioner asserts that the regulations do not limit the L visa to large corporations, and cites to *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) and *Johnson-Laird Inc. v. INS*, 537 F. Supp. 52 (D. Or. 1981). With regards to the question of who was providing the goods and services of the United States operations, the petitioner asserts that it is an advertising and marketing company, and asserts that the Service misunderstands the size of its business.

With regards to the qualifying relationship, the petitioner asserts that one of the submitted stock certificates was erroneous. The petitioner asserts that the submitted evidence was sufficient to establish a qualifying relationship. The petitioner also asserts that [REDACTED] is a shareholder and director of the foreign entity.

In support of the motion to reopen and reconsider, the petitioner submits the following documents:

1. The beneficiary's pay stubs from the foreign entity (previously submitted);
2. The petitioner's lease (previously submitted);
3. The foreign entity's 2009 Profit and Loss Statement (previously submitted);
4. The foreign entity's organizational chart (previously submitted);
5. The petitioner's signed, uncertified 2010 IRS Form 1120 (U.S. Corporation Income Tax Return) (previously submitted without signature);
6. The petitioner's stock ledger (previously submitted);
7. The petitioner's stock certificate number 1 issued to the foreign entity for 500 shares (previously submitted);
8. Affidavit from [REDACTED], dated June 8, 2011, attesting that the foreign entity owns 100% of the shares of the U.S. company (previously submitted);
9. The petitioner's 2010 IRS Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in U.S. Trade or Business (previously submitted);

10. "General Meeting of Shareholders of the Corporation [REDACTED] Celebrated on April 21 of 2010" indicating that [REDACTED] was added as a shareholder and President of the foreign entity on April 21, 2010 (new submission);
11. Power of Attorney given to [REDACTED] by the beneficiary and [REDACTED] dated April 16, 2010 (new submission);
12. Proposed position descriptions for all U.S. employees including for descriptions for the CFO and Vice President (new submission); and
13. IRS Form 4506, Request for Copy of Tax Return completed by the petitioner (new submission).

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.

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 evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup> The petitioner's statements on motion and accompanying evidence contain no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2).

On motion, the petitioner explains it employs [REDACTED] as the Vice President of the petitioner, and that he is not the same person as [REDACTED] who is the Advertising Manager subordinate to the beneficiary. However, the petitioner's claimed employment of [REDACTED] as Vice President, in addition to its employment of [REDACTED] as Advertising Manager, cannot be considered a "new" fact. A review of the evidence in the record, particularly the petitioner's organizational chart and position descriptions for its U.S. employees, reflects that the petitioner claimed only one employee named [REDACTED] and did not claim to employ a Vice President or a second director position. The petitioner's evidence depicted [REDACTED] as the sole director. The petitioner failed to explain why its claimed employment of [REDACTED] could be considered a fact that was not available and could not have been presented in the previous proceeding. Moreover, the petitioner failed to provide any affidavits or other documentary evidence to support its claimed employment of [REDACTED] in addition to [REDACTED]

On motion, the petitioner submits position descriptions for its entire U.S. staff for the first time, including descriptions for the CFO and Vice President. However, these new descriptions also cannot be considered "new" facts for the purposes of a motion to reopen. The petitioner failed to explain why these descriptions

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<sup>1</sup> 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).

were not available and could not have been presented in the previous proceeding. Notably, the director's RFE specifically advised the petitioner to submit a detailed description of the staff of the new U.S. office to include each employee's job duties. The petitioner failed to submit the requested descriptions in response to the RFE.

On motion, the petitioner asserts that one version of its share certificate number 1 was erroneous, and that the other version of stock certificate number 1 submitted in response to the RFE is accurate. The petitioner also submits new documents to support its claimed qualifying relationship to the foreign entity, including the "General Meeting of Shareholders of the Corporation [REDACTED] Celebrated on April 21 of 2010" dated April 21, 2010. However, none of the petitioner's assertions or newly submitted documents regarding the qualifying relationship can be considered "new" facts. The petitioner failed to explain why the above information and documents were not available and could not have been presented in the previous proceeding. Notably, the director's RFE specifically advised the petitioner to submit evidence of the ownership and control of the foreign entity. In response to the RFE, the petitioner submitted evidence reflecting the foreign entity's ownership structure as owned by the beneficiary (1600 shares) and [REDACTED] (6400 shares). The petitioner cannot now submit new documentation depicting a completely different ownership structure in an attempt to cure the deficiencies in the record. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence.

The petitioner offered no statements or evidence which could be considered "new" facts for the purposes of a motion to reopen. For the reasons discussed above, the instant motion does not meet the regulatory requirements for a motion to reopen. The petitioner's motion to reopen will be dismissed.

The AAO will now analyze whether the instant motion meets the requirements for a motion to reconsider. 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.

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.<sup>2</sup> With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

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<sup>2</sup> 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.

**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) 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.

Here, the petitioner repeatedly asserts that it is a new office in an attempt to overcome the AAO's finding that its description of its claimed organizational structure and staffing is not credible. The petitioner contends that, as a new office, its organizational structure can change based upon the needs of the company and did not need to be exactly described, as the regulations require only a proposed organizational chart. The petitioner also contends that that the Service's conclusion that its organizational structure is "top heavy" is too subjective.

The petitioner's assertions are unpersuasive and are insufficient to establish that the AAO's decision was incorrect based on the evidence of record at the time of the decision. In dismissing its appeal, the AAO found that the petitioner's description of the beneficiary's job duties were vague. The AAO also found that the petitioner's claimed organizational structure and staffing lacked credibility based upon a variety of factors, including the lack of credible position descriptions for all employees, the duplicative nature of the employees' duties, the petitioner's "top heavy" structure (i.e., six or seven managerial and executive employees within a nine person company), and the lack of lower level employees to provide the goods and services of the U.S. operations. On motion, the petitioner vaguely references the AAO's decision and then cites the regulations pertaining to new offices and the term "managerial capacity," but fails to articulate how the AAO misapplied the regulations to the petitioner's evidence. The petitioner failed to establish why the AAO's findings were erroneous based on the evidence of record at the time of the decision.

While the AAO acknowledges that the petitioner is a new office, the petitioner is nevertheless required to submit a credible, good faith description of its proposed organizational structure at the time of filing. 8 C.F.R. § 214.2(l)(3)(v)(C)(I). A petitioner may not knowingly misrepresent its proposed organizational structure, and then rely on its status as a new office to explain its misrepresentations. See section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182(a)(6)(c). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On motion, the petitioner asserts that the regulations do not limit the L visa to large corporations, and cites to *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) and *Johnson-Laird Inc. v. INS*, 537 F. Supp. 52 (D. Or. 1981). However, other than summarizing the regulations and case law pertaining to the size of the company, the petitioner fails to articulate how the AAO misapplied the regulations and case law to the petitioner's evidence.

Regardless, the AAO emphasizes that its holding is not based on the size of the petitioning entity, but rather, the petitioner's failure to provide complete, credible descriptions of its organizational structure and staffing,

and ultimately, its failure to establish that the petitioner would employ the beneficiary in a primarily managerial or executive capacity. For instance, the AAO found that the petitioner failed to explain who was providing the goods and services of the United States operations. In direct rebuttal to this finding, the petitioner asserts on motion that it is a "Miami advertising and marketing company that has pioneered multiple innovative and eye catching tools," and asserts that the Service misunderstands the size of its business. The petitioner's response on motion still does not answer the critical question of who will provide the goods and services of the United States operations. Instead, the petitioner's motion consists of general assertions that the Service misapplied the law, without any specific articulation as to how the AAO misapplied the law to the petitioner's evidence. The petitioner failed to establish that the AAO's findings were erroneous based upon the evidence in the record.

For the reasons discussed above, the instant motion does not meet the regulatory requirements for a motion to reconsider. Accordingly, the petitioner's motion to reconsider will be dismissed.

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 instant 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.