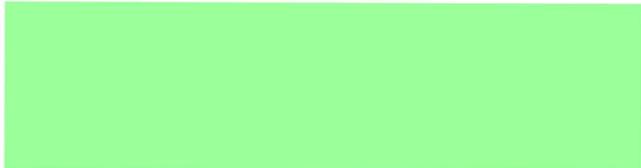




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 27 2014 OFFICE: VERMONT SERVICE CENTER



IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and dismissed the petitioner's two subsequent motions. The petitioner then filed an appeal with the Administrative Appeals Office (AAO), and, on June 27, 2011, the AAO dismissed the appeal. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision, and, on May 24, 2013, the AAO dismissed the motions. The petitioner then filed a second motion to reconsider, and, on August 22, 2013, the AAO dismissed the motion. The matter is now before the AAO on a second motion to reopen, in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

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 June 27, 2011, 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.

On December 19, 2012, the AAO dismissed the appeal and 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, including the position descriptions for the proposed 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] 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 further 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] 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 a motion to reopen and a motion to reconsider the AAO's decision, and, on May 24, 2013, the AAO dismissed both motions concluding that the petitioner failed to (1) present new evidence or facts that were not available and could not have been discovered or presented in the previous proceeding, and (2) establish that the AAO's decision was incorrect based on the evidence of record at the time of the decision. The petitioner then filed a second motion to reconsider the AAO's decision, and, on August 22, 2013, the AAO dismissed the motion concluding that the petitioner failed to address the grounds stated for dismissal of the previous motion or the appeal.

The petitioner subsequently filed the instant motion to reopen the AAO's decision dated August 22, 2013. On motion, the petitioner submits a brief in which it states that it is presenting new evidence consisting of "updating the parent company's operations in Venezuela as well as to update the documents regarding the operations of the US subsidiary."

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

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

1. The foreign entity's by-laws with a partial translation (new submission);
2. The foreign entity's tax documentation thru July 2013 (new submission);
3. The foreign entity's organizational chart (previously submitted);
4. Education verification documents for employees of the foreign entity (new submission);
5. The foreign entity's commercial loan request dated January 29, 2013 (new submission);
6. The foreign entity's bank statements and invoices through 2012 (new submission);
7. Photos of the foreign entity's store (previously submitted);
8. The petitioner's articles of incorporation (previously submitted);
9. The petitioner's uncertified 2012 IRS Form 1120, U.S. Corporation Income Tax Return (new submission);
10. Affidavit from [REDACTED] dated June 8, 2011, attesting that the foreign entity owns 100% of the shares of the U.S. company (previously submitted);
11. The petitioner's stock certificate number 1 issued to the foreign entity for 500 shares (previously submitted);

12. 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);
13. The petitioner's 2012 IRS Form W-3, Transmittal of Wage and Tax Statements (new submission);
14. The petitioner's 2012 IRS Forms W-2, Wage and Tax Statement, for [REDACTED]
[REDACTED]
15. The petitioner's business lease dated May 21, 2012, for office C-119 in [REDACTED] (new submission);
16. A letter from [REDACTED], dated April 4, 2013, verifying the petitioner's tenancy in unit 204 in [REDACTED] (new submission);
17. Updated photographs of unit 204 in [REDACTED] (new submission);
18. An "Exclusive Distribution Agreement" between the petitioner and [REDACTED], dated September 1, 2013 (new submission);
19. Several "certifications of distributorship" between the petitioner and other companies (new submission);
20. Photographs of office 119 in [REDACTED] (new submission);
21. The petitioner's unsigned and uncertified IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2013 (new submission);
22. The petitioner's uncertified Form RT-6, Florida Department of Revenue Employer's Quarterly Report, for the first quarter of 2013 (new submission); and
23. Education verification documents for the beneficiary and other employees of the U.S. company (previously submitted).

The instant motion consists of the above listed documents and the petitioner's brief dated September 20, 2013, which simply states that it is submitting updated documents for the U.S. and foreign entities and that the U.S. company is not frivolous. The petitioner does not reference the findings made in the AAO's decision and the specific inconsistencies and deficiencies remarked upon therein, no new facts have been provided to support a motion to reopen.

The purpose of a motion to reopen 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 reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. As such, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of the AAO's decision issued on August 22, 2013. The petitioner has not met this burden.

In addition, 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 listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also 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.

Finally, it should be noted for the record that, unless USCIS directs otherwise, the filing of a motion does not stay the execution of any decision in a case or extend a previously set departure date. *See* 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is dismissed.