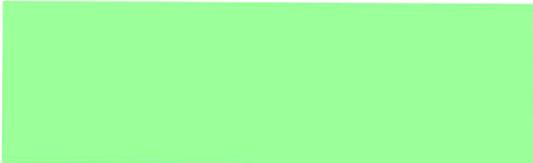




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: FEB 27 2014 OFFICE: VERMONT SERVICE CENTER

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner filed a motion to reconsider, which the director granted, and denied the petition. The petitioner then appealed this denial to the Administrative Appeals Office (AAO), and, on December 31, 2012, the AAO dismissed the appeal. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision, and, on August 22, 2013, the AAO granted the motion to reconsider and affirmed its decision dated December 31, 2012. 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 classify 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 January 2010, engages in the business of advertising and marketing technology. It claims to be a 100% owned subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary as the chief financial officer (CFO) of its new office in the United States for a period of one year.

The director denied the petition on July 27, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition. The director observed that the beneficiary's job duties included routine bookkeeping functions such as "creating financially and statically [*sic*] tools and reports using spreadsheets and updating data using database applications." The director concluded that the beneficiary would likely perform the non-managerial, day-to-day functions of the U.S. operations. The director granted the petitioner's subsequent motion to reconsider and affirmed the denial of the petition on November 15, 2011.

The petitioner subsequently filed an appeal to the AAO. On December 31, 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 beneficiary's proposed duties consist of primarily non-qualifying, routine bookkeeping duties. The AAO further found that the beneficiary's duties will overlap with those of the accountant and CEO. The AAO also found that the petitioner's claimed organizational structure and staffing, including the position descriptions for the U.S. employees, were not credible and that many of the described job duties for the U.S. employees were similar to each other. The AAO concluded that the petitioner failed to establish that the new U.S. operation could realistically support the beneficiary in a primarily managerial role within one year.

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 a stock certificate and stock transfer ledger issuing five hundred shares to the foreign entity in exchange for \$10,000. However, the foreign entity's letter states that it "initially funded the subsidiary . . . with a total of approximately \$202,000." The AAO further observed that the petitioner's business plan lists the "planned investment" from the foreign entity as \$300,000. The AAO recognized that the petitioner submitted its own and the foreign entity's bank statements to show several wire transfers from the foreign entity to the petitioner; however, the bank statements did not identify the recipients or remitters of the wire transfers. Furthermore, the dates of the wire transfers made and received by the foreign entity and the petitioner do not match. Finally, the AAO observed that a letter from [REDACTED] states that he met with the

petitioner's proprietors, [REDACTED] in June 2010, thus undermining the petitioner's claims that it is 100% owned by the foreign entity.

The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision, and, on August 22, 2013, the AAO granted the motion to reconsider and affirmed its decision of December 31, 2012.

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. A letter written by [REDACTED] to an unknown recipient stating that she will be the "person in charge of [the recipient's] requests and requirements as well as the quality control of [its] merchandise, delivery and importation of the same . . ." (new submission);
6. The foreign entity's commercial loan request dated January 29, 2013 (new submission);
7. The foreign entity's bank statements and invoices through 2012 (new submission);
8. Photos of the foreign entity's store (previously submitted);
9. The petitioner's articles of incorporation (previously submitted);
10. The petitioner's uncertified 2012 IRS Form 1120, U.S. Corporation Income Tax Return (new submission);
11. Affidavit from [REDACTED], dated June 8, 2011, attesting that the foreign entity owns 100% of the shares of the U.S. company (previously submitted);
12. The petitioner's stock certificate number 1 issued to the foreign entity for 500 shares (previously submitted);
13. 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);
14. The petitioner's 2012 IRS Form W-3, Transmittal of Wage and Tax Statements (new submission);
15. The petitioner's 2012 IRS Forms W-2, Wage and Tax Statement, for [REDACTED]

- [REDACTED]
16. The petitioner's business lease dated May 21, 2012, for office C-119 in [REDACTED] (new submission);
  17. A letter from [REDACTED] dated April 4, 2013, verifying the petitioner's tenancy in unit 204 in [REDACTED] (new submission);
  18. Updated photographs of unit 204 in [REDACTED] (new submission);
  19. An "Exclusive Distribution Agreement" between the petitioner and [REDACTED] dated September 1, 2013 (new submission);
  20. Several "certifications of distributorship" between the petitioner and other companies (new submission);
  21. Photographs of office [REDACTED] (new submission);
  22. The petitioner's unsigned and uncertified IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2013 (new submission);
  23. The petitioner's uncertified Form RT-6, Florida Department of Revenue Employer's Quarterly Report, for the first quarter of 2013 (new submission); and
  24. 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.