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: JUN 0 2 2014 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 (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 petitioner later filed a second motion to reopen, and, on February 27, 2014, the AAO dismissed the motion. The matter is now before the AAO on a third motion to reopen and reconsider, 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 , 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, we 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 our decision, we found that the petitioner's descriptions of the beneficiary's proposed duties in the United States were vague and overly broad. We also found that the petitioner's claimed organizational structure, including the position descriptions for the proposed U.S. employees, was not credible. Specifically, we found that the petitioner's claim that the beneficiary will directly supervise the Advertising Manager, , was not credible because the evidence in the record indicated that is the petitioner's Vice President, Secretary, and one of its two Directors. We 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 , and depicted as the only director.

We also found that the petitioner failed to provide position descriptions for the Vice President, Chief Financial Officer (CFO), Secretary, and Advertising Manager and that many of the described job duties for the U.S. employees were similar to each other. We concluded that the petitioner's failure to provide clear, complete position descriptions for all its U.S. staff was critical and the lack of this evidence prohibited any means of assessing the credibility of the beneficiary's claimed job duties in the context of the petitioner's entire operations. We 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.

We further found that the petitioner failed to establish a qualifying relationship to (the "foreign entity"). We 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. We also determined that the emails between and , and the letter from lacked probative value, considering the dates of the emails and the evidence in the record reflecting that did not have any ownership interest in the foreign entity.

The petitioner filed a motion to reopen and a motion to reconsider our decision, and, on May 24, 2013, we 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 our decision was incorrect based on the evidence of record at the time of the decision.

The petitioner then filed a second motion to reconsider our decision, and, on August 22, 2013, we dismissed the motion concluding that the petitioner failed to address the grounds stated in the dismissal of the pervious motion or the appeal.

The petitioner later filed a second motion to reopen our decision, and, on February 27, 2014, we dismissed the second motion to reopen and affirmed our decision of August 22, 2013.

The petitioner subsequently filed the instant motion to reopen and motion to reconsider our decision dated February 27, 2014. On motion, the petitioner submits a brief in which it states that it disagrees with our decision and it submits a motion to reconsider "because we are convinced that our Company" meets the governing statute and regulations. The petitioner's brief includes a description of the beneficiary's proposed duties that is identical in substantive content to the descriptions previously submitted and considered in our decision to dismiss the petitioner's appeal on December 19, 2012. The petitioner briefly addresses the beneficiary's subordinate employees and states that they are "managers" supervised by the beneficiary. The petitioner also addresses our determination that the petitioner failed to establish a qualifying relationship with the foreign entity by stating that there was error in issuing 1,000 shares of the U.S. company on a share certificate that was rectified at a later date when the error was discovered.

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.

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

1. The petitioner's business lease dated May 21, 2012, for office C-119 in Weston, FL (previously submitted);
2. The petitioner's City of Weston business tax receipt, effective October 1, 2013 to September 30, 2014 (new submission);

3. The petitioner's City of Weston Certificate of Use, issued June 28, 2012 (previously submitted);
4. Photographs of office 119 in Weston, FL (previously submitted);
5. A letter from dated March 26, 2014, extending the petitioner's lease at unit 204 in Sunrise, FL through March 31, 2015 (new submission);
6. The petitioner's commercial center lease dated June 17, 2010, for bay 204 in Sunrise, FL (previously submitted);
7. The petitioner's City of Sunrise business tax receipt, effective February 14, 2014 to September 30, 2014 (new submission);
8. Photographs of unit 204 in Sunrise, FL (previously submitted);
9. A brochure for (previously submitted);
10. The foreign entity's " " dated April 21, 2010, indicating that owns 9,900 shares, owns 3,358 shares, owns 1,392 shares, and owns 350 shares (new submission);
11. Numerous emails between and other companies;
12. The foreign entity's organizational chart (previously submitted);
13. Print-outs of the petitioner's website;
14. A web print-out of the U.S. Bureau of Labor Statistics Advertising, Promotions, and Marketing Managers job information;
15. An "Exclusive Distribution Agreement" between the petitioner and dated September 1, 2013 (previously submitted);
16. A commercial invoice, dated March 27, 2014 for (new submission);
17. A letter from , dated March 25, 2014, confirming that it has a commercial relationship with the petitioner since January 2011 (new submission);
18. Affidavit from dated June 8, 2011, attesting that the foreign entity owns 100% of the shares of the U.S. company (previously submitted);
19. The petitioner's stock transfer ledger indicating that the foreign entity owns 500 shares of the U.S. company on certificate number one, issued in 2010, as original (previously submitted);
20. The petitioner's stock certificate number 1 issued to the foreign entity for 500 shares (previously submitted);
21. 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);
22. The petitioner's uncertified 2012 IRS Form 1120, U.S. Corporation Income Tax Return (previously submitted);
23. The petitioner's uncertified 2012 Form F-1120, Florida Corporate Income/Franchise Tax Return (new submission);
24. The petitioner's articles of incorporation (previously submitted); and
25. Copies of the beneficiary's pay stubs at the foreign entity from 2008 (previously submitted).

The regulation at 8 C.F.R. § 103.5(a)(3) states:

> 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 [U.S. Citizenship and Immigration Services (USCIS)] 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.

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."

The instant motion consists of the above listed documents and the petitioner's brief dated March 26, 2014. The petitioner references the director's original decision and our subsequent decisions in its brief and addresses the presented issues with the same statements as previously submitted. The petitioner asserts that the director and the AAO failed to consider the evidence presented at the time of filing, in response to the RFE, on appeal, and on motion. However, we thoroughly addressed the petitioner's objections to the denial of the petition in a 13-page decision on the appeal and a subsequent 7-page decision on the first motion to reopen and motion to reconsider. The petitioner fails to meaningfully address the deficiencies in the record set out in our prior decisions; rather the petitioner simply states its disagreement with our interpretation and findings without offering probative evidence or argument in support of its disagreement. Moreover, the petitioner fails to address the inconsistencies in the record regarding the size of the U.S. investment as found by the AAO. Upon review of the petitioner's motion in the instant matter, the petitioner has not presented probative new facts to support a motion to reopen. Neither has the petitioner submitted statements for reconsideration supported by pertinent precedent decisions establishing that we improperly applied the law or USCIS policy as required for a motion to reconsider.

The purpose of a motion to reopen or motion to reconsider 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. A motion for reconsideration must state the reasons for re-consideration and be supported by pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy. As such, our 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 or provided a reason for reconsideration of our decision issued on February 27, 2014. 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).

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 met that burden. Accordingly, the 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.