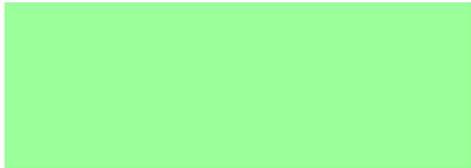




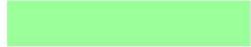
U.S. Citizenship
and Immigration
Services

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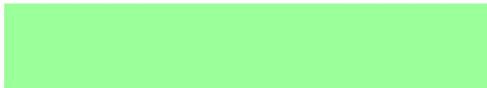
OFFICE: VERMONT SERVICE CENTER

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. 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 petitioner filed a second motion to reopen, and, on February 27, 2014, the AAO affirmed its decision dated August 22, 2013. The matter is now before the AAO on a third motion to reopen and motion to reconsider, 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] located in Venezuela. 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, 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 beneficiary's proposed duties consist of primarily non-qualifying, routine bookkeeping duties. We also found that the beneficiary's duties will overlap with those of the accountant and CEO. We further 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. We 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.

Regarding a separate issue, we found that the petitioner had failed to establish a qualifying relationship to [REDACTED] (the "foreign entity"). We 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." We further observed that the petitioner's business plan lists the "planned investment" from the foreign entity as \$300,000. Although we 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; we noted that the bank statements did not identify the recipients or remitters of the wire transfers. Furthermore, the dates of the wire transfers do not match. Finally, we observed that a letter from [REDACTED] Vice President of [REDACTED] states that he met with the petitioner's proprietors, [REDACTED]

█ and █ in June 2010, thus further 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 our decision, and, on August 22, 2013, the motion to reconsider was granted and we affirmed our decision of December 31, 2012.

The petitioner then filed a second motion to reopen our decision, and, on February 27, 2014, we dismissed the second motion to reopen and again affirmed our decision.

The petitioner subsequently filed the instant motion to reopen and motion to reconsider our February 27, 2014 decision. 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 31, 2012. The petitioner briefly addresses the beneficiary's subordinate employees and states that they are professionals supervised by the beneficiary. The petitioner also addresses our finding that the petitioner failed to establish a qualifying relationship with the foreign entity by stating that the monetary transfers were made from the foreign entity to the U.S. company and that Venezuela "suffers a foreign exchange limitation to transfer abroad" which may be the cause of the delayed dates that did not match.

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, [REDACTED] owns 1,392 shares, and [REDACTED] owns 350 shares (new submission);
11. Numerous emails between [REDACTED] and other companies;
 12. The foreign entity's organizational chart (previously submitted);
 13. Print-outs of the petitioner's website (new submission);
 14. A web print-out of the U.S. Bureau of Labor Statistics Advertising, Promotions, and Marketing Managers job information (new submission);
 15. An "Exclusive Distribution Agreement" between the petitioner and [REDACTED], dated September 1, 2013 (previously submitted);
 16. A commercial invoice, dated March 27, 2014 for [REDACTED] (new submission);
 17. A letter from [REDACTED], dated March 25, 2014, confirming that it has a commercial relationship with the petitioner since January 2011 (new submission);
 18. Affidavit from [REDACTED] 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);¹
 20. The petitioner's stock certificate number 1 issued to the foreign entity for 500 shares (previously submitted);²
 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); and
 24. The petitioner's articles of incorporation (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

¹ We note that the previous submission of the U.S. company's stock transfer ledger, submitted at the time of filing, contains the same information as the one submitted with the instant motion; however, the completion of the form is not consistent as the writing on the previously submitted ledger exists primarily on the first line and omits the "time became owner" response, and the writing on the instant ledger exists primarily on the second line and includes the "time became owner" response as "2010."

² We note that the previous submission of the U.S. company's stock certificate number 1, submitted at the time of filing, contains the same information as the one submitted with the instant motion; however, the signatures are not consistent as the previously submitted certificate includes the signature of the secretary and president, and the instant certificate includes only the signature of the president. We further observe that the president's signature on the instant certificate is different to that of the previously submitted certificate.

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 14-page decision on the appeal and in a subsequent 6-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 asserts its disagreement with our interpretation without providing 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, but instead submits, as original, documents that appear to have been tampered with. Upon review of the petitioner's motion in the instant matter, the petitioner has not presented probative new facts which address the deficiencies in the record sufficient to support a motion to reopen. Neither has the petitioner submitted statements supported by pertinent precedent decisions establishing that the law or USCIS policy was incorrectly applied to support 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, 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 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.