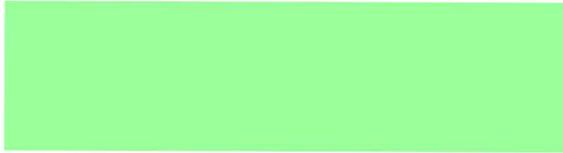




U.S. Citizenship
and Immigration
Services

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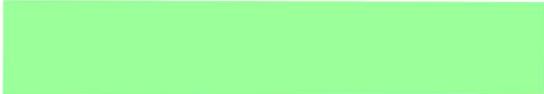


DATE: **MAY 01 2014**

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. The petitioner has subsequently filed a total of three appeals and seven motions with the Administrative Appeals Office (AAO). Most recently, the AAO dismissed the petitioner's motion to reopen and reconsider in a decision dated August 28, 2013. The matter is once again before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner seeks to extend the beneficiary's employment as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of New Jersey, and is engaged in the wholesale of general merchandise. The beneficiary was initially granted a one-year period of stay in the United States in L-1A status in order to open a new office and the petitioner seeks to extend the beneficiary's stay.

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 under the extended petition. Although we summarily dismissed the petitioner's appeal on February 1, 2006, the petitioner subsequently filed a motion to reopen that was granted for the purpose of considering a timely filed appellate brief that had not been incorporated into the record prior to our initial decision. As reviewed in our previous decision, we issued a 14-page decision affirming the denial of the petition and dismissal of the appeal on May 17, 2007. The appeal contemplated the issues in the director's decision and determined that the petitioner's submissions, from the time the petition was originally filed along with any further submissions made up through and including the time of the appeal, were insufficient to establish eligibility and overcome the director's findings.

Nevertheless, the petitioner filed a second appeal on June 14, 2007, which we rejected as improperly filed on December 4, 2007, noting that we do not exercise appellate jurisdiction over our own decisions. In our decision, we reviewed the petitioner's appeal and found that it did not meet the requirements for a motion to reopen or reconsider. We then reviewed and dismissed a subsequent motion, which the petitioner filed on January 4, 2008. Despite having been informed that a petitioner cannot file multiple appeals on a single petition, the petitioner filed a third appeal, which we rejected on November 25, 2008, again noting that we do not exercise appellate jurisdiction over our own decisions. The petitioner proceeded to file four subsequent motions to reopen and reconsider, all of which were dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4), based on the petitioner's failure to satisfy applicable filing requirements. In support of the petitioner's fifth motion to reopen and reconsider, the petitioners asked us to consider a supporting brief, which the petitioner did not submit along with the Form I-290B, Notice of Appeal or Motion, filed on April 26, 2013. Rather, the petitioner altered Part 2, subsection F of the Form I-290B from the original version, which states, "My brief and/or additional evidence is attached," to read the following: "My brief and/or additional evidence will be submitted in 90 days (ninety)." It is noted that the brief was not incorporated into the record prior to our review of the petitioner's motion, thus leading us to conclude that the petitioner did not provide evidence to support the motion to reopen and reconsider. We therefore dismissed the petitioner's motion.

The petitioner now seeks consideration of additional evidence and a supporting brief, which was intended to be submitted in support of the motion that was filed on April 26, 2013. The petitioner also submits another

brief in support of the current motion along with an undated document titled, "Discussion," which addresses issues pertaining to the petitioner's eligibility.

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 prior motion, at the time it was filed, did 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, the AAO properly dismissed the petitioner's motion, filed on April 26, 2013, which did not meet specific motion requirements.

Additionally, the regulation at 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. . . .

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.¹ With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

Therefore, to have established merit for reconsideration of our latest decision the petitioner must both: (1) state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and (2) specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believed that we misapplied in our prior decision. We stress that the requirements for a motion to reconsider are specific. As indicated above and in numerous of our prior decisions, the regulation at 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider state the reasons for reconsideration and that it be supported by any pertinent precedent decisions to establish that the prior decision was based on an incorrect application of law or Service policy. Such explanation and supporting evidence must be submitted on or with Form I-290B. See 8 C.F.R. §§ 103.5(a)(2) and (3).

Moreover, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24

¹ 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.

I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

As in the previously filed motion, the petitioner once again states on the Form I-290B that the basis for motion is “[b]eing aggrieved by the decision to deny BOTH in fact & law.” In a follow-up brief, the petitioner satisfies the requirements of 8 C.F.R. § 103.5(a)(1)(iii)(C) by stating “that the validity of the unfavorable decision is NOT the subject of any judicial proceeding.” The petitioner also asks that the AAO remove any adverse finding with regard to the petitioner’s non-submission of evidence in support of the April 26, 2013 motion, asserting and providing evidence to show that the petitioner indeed provided a supporting brief within 90 days of filing the said motion.

We find that the petitioner's motion does not meet applicable requirements. As acknowledged above, the petitioner’s Form I-290B, filed April 26, 2013, stated that additional evidence would be submitted in 90 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Accordingly, the AAO’s dismissal of the petitioner’s prior motion, which lacked any supporting evidence or information at the time of review, was correct based on the petitioner’s failure to meet applicable requirements for filing a motion to reopen or reconsider.

The petitioner’s claim of being "aggrieved" by the decision is vague and fails to explain how we misapplied the law or policy. The record shows that the petitioner has made similar claims in prior motions and we have addressed these claims in prior decisions. The petitioner cannot generally request reconsideration of every decision to date. The purpose of a motion is different from the purpose of an appeal. While we conduct a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reconsider is strictly limited to an examination of any purported misapplication of law of USCIS policy *in the most recent decision*. We previously conducted a *de novo* review of the entire record of proceeding when we reopened the matter to consider the petitioner's appellate brief in our May 17, 2007 decision. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated. Although the record contains a supporting brief that we have reviewed in contemplating the merits of the petitioner’s most recent motion, we find that the petitioner has once again reiterated arguments that have been addressed and found to be insufficient in our prior decisions. Furthermore, given that the petitioner did not provide a supporting brief in support of its April 26, 2013 motion, we properly dismissed that motion. The petitioner will not succeed in its effort to have us reopen this matter in order to consider a supporting brief that should have been filed at the same time it filed the motion.

For the foregoing reasons, the instant motion does not meet the requirements of a motion to reconsider. The motion fails to establish that our decision dated August 28, 2013, dismissing the previous motion was in error, as required by 8 C.F.R. § 103.5(a)(3).

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. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions will not be disturbed.

ORDER: The motion is dismissed.