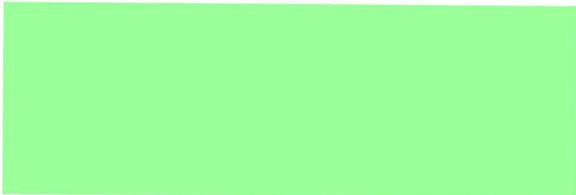


(b)(6)

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

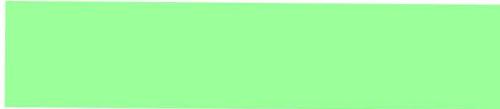


DATE: **MAY 15 2014**

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:



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 nonimmigrant visa petition. The petitioner's subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. 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 Louisiana corporation, states that it is engaged in business consulting services. The petitioner states it is an affiliate of [REDACTED] located in Guatemala. The petitioner currently employs the beneficiary as its president and seeks to extend his L-1A status for two additional years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed in a managerial or executive capacity. Additionally, the director questioned whether "the domestic entity physically exists for immigration purposes."

The petitioner subsequently filed an appeal. The AAO dismissed the appeal, concluding that the petitioner had not established that the beneficiary will be employed in a qualifying managerial or executive capacity. In dismissing the appeal, this office observed that the petitioner had submitted a vague and overly broad position description for the beneficiary which failed to convey what he would be doing on a day-to-day basis. Further, this office also noted some of the beneficiary's stated responsibilities were inconsistent with the stated nature and scope of the petitioner's operations, and found that the petitioner documented only one employee to actually carry out the operational tasks associated with its business. Although the appeal was dismissed, the AAO found that the petitioner established that it is doing business and otherwise "exists for immigration purposes."

The petitioner now files a motion to reconsider in response to the AAO's decision dated November 13, 2013.

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 purpose of a motion to reopen 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, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has documented sufficient reasons, supported by

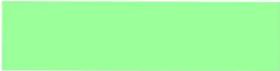
statute, regulations and pertinent precedent decisions, to warrant the reconsideration of the AAO's most recent decision.

On motion, the petitioner asserts that, based on the evidence previously submitted "it is clear that this case should be reopened and that petitioner's L-1A visa renewal petition should be approved."

The petitioner has not stated sufficient reasons for reconsideration supported by pertinent citations to statutes, regulations, or precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. The petitioner, through counsel, has merely repeated the same assertions it previously made on appeal. The petitioner fails to articulate a specific error on the part of the AAO in its previous decision, or specifically address the grounds for dismissal for the appeal as thoroughly discussed in that decision.

For example, in dismissing the appeal, the AAO emphasized that the duty description submitted for the beneficiary was overly vague and that it failed to convey the beneficiary's actual day-to-day activities. On motion, the petitioner simply contends that the job descriptions previously submitted are sufficiently descriptive, and reiterates the statutory definitions of managerial and executive capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Additionally, the petitioner has failed to address the discrepancies discussed in the AAO's decision. For instance, the petitioner that the beneficiary will spend a significant portion of time coordinating with a board of directors, and also explained that he manages subcontractors and coordinates the development of products. However, the record does not support a conclusion that the petitioner has an active board of directors for the beneficiary to coordinate with, that it has subcontractors, or that it develops products. Again, the petitioner has failed to address these discrepancies on motion. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Likewise, this office noted the petitioner's failure to establish with supporting evidence that the petitioner employed sufficient operational employees to support the beneficiary in a qualifying managerial or executive capacity. For instance, this office pointed to the fact that the organizational chart indicated that the petitioner had seven managerial and administrative employees, but only one operational employee to perform the janitorial services that generate income for the business. The petitioner has not addressed these reasons for dismissal, or explained how the AAO's decision was based on an incorrect or USCIS policy. Given the purpose of the motion to reconsider, the AAO will not conduct another de novo review of the entire record. Therefore, the petition will remain denied based on the petitioner's failure to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.



As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 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, the petitioner has not met that burden.

**ORDER:** The motion is dismissed.