

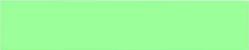


U.S. Citizenship
and Immigration
Services

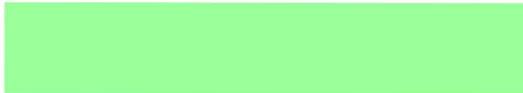
(b)(6)



DATE: **SEP 25 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 subsequently filed a total of four appeals and seven motions with the Administrative Appeals Office (AAO). Most recently, we dismissed the petitioner's motion to reopen and reconsider in a decision dated May 1, 2014. The matter is once again before us 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 New Jersey corporation 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 now seeks to extend the beneficiary's stay.

The procedural history in this matter is lengthy, starting with the director's decision denying the petition on February 24, 2004 based on the conclusion 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, which we 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 prior decisions, on May 17, 2007 we issued a 14-page decision affirming the denial of the petition and dismissal of the appeal. The appeal fully explored the issues discussed in the director's decision and determined that the petitioner's submissions, from the time the petition was originally filed through and including the time of the appeal, were insufficient to establish eligibility and overcome the director's findings.

Nevertheless, the petitioner improperly filed a second appeal on June 14, 2007, which we rejected on December 4, 2007, explaining that we do not exercise appellate jurisdiction over our own decisions. We also found that we could not consider the petitioner's appeal as a motion to reopen or reconsider based on the petitioner's failure to meet the motion requirements. On January 4, 2008, the petitioner filed a motion, which we reviewed and dismissed. Next, 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 then filed four subsequent motions to reopen and reconsider, all of which were dismissed based on the petitioner's failure to satisfy applicable filing requirements. In support of the petitioner's fifth motion to reopen and reconsider, the petitioner 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 fifth motion.

In its sixth motion, the petitioner sought consideration of additional evidence and a supporting brief, which was intended to be submitted in support of the fifth motion, filed on April 26, 2013. The petitioner also submitted another brief in support of the sixth motion, filed on September 26, 2013, along with a 23-page undated document titled, "Discussion," which addresses issues pertaining to the petitioner's eligibility. We found that the petitioner satisfied 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." However, we declined to reconsider the adverse finding with regard to the petitioner's untimely submission of documents in support of the April 26, 2013 motion. We pointed out that while the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for additional time to submit a brief or additional evidence in connection with an appeal, there is no similar provision with regard to a motion to reopen or reconsider. We therefore determined that our 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. We further found that the petitioner's claim of being "aggrieved" by the adverse decision was vague and that the petitioner failed to explain how we misapplied the law or policy.

As noted in several of our prior decisions, the record shows that the petitioner has made similar claims in prior motions and we have addressed those claims in prior decisions. We repeatedly explained that while we conduct a *de novo* review of the entire record on appeal, the scope of the issues to be addressed in the case of a motion is limited to an examination of any purported misapplication of law or USCIS policy *in the most recent decision*. As demonstrated in our May 17, 2007 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 and all matters concerning the petitioner's eligibility. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. With regard to the circumstances at hand, the petitioner has been issued a detailed appellate decision specifically addressing matters concerning the petitioner's statutory eligibility. That decision was followed by a series of motions, all of which were denied based on the petitioner's failure to meet motion requirements. While we reviewed the petitioner's supporting brief in contemplating the merits of the petitioner's prior motion, we found that the petitioner once again reiterated arguments that were addressed and deemed to be insufficient.

In this matter, the petitioner maintains its objections to the analysis contained in the director's original decision, with an issue date of February 24, 2004, and further contends that the very fact that we upheld the director's decision indicates that we failed to apply the current law, regulation, or policy. The petitioner lists a number of federal court decisions in an effort to establish that the petitioner has complied with 8 C.F.R. § 103.2(a)(1) and that "ignoring this fact of due compliance, [sic] is another instance of Abuse of Discretion."

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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 the present matter, the petitioner has failed to submit any new evidence. Therefore, the petitioner has failed to meet the requirements of a motion to reopen.

Next, with regard to the motion to reconsider, 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. . . .

As in our prior decision, we stress again that in order 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 we misapplied in our prior decision.

Moreover, as we cautioned in our earlier decisions, 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 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 the petitioner's primary objections focus on findings that the director made in his original decision denying the petition, it is apparent that the petitioner had ample opportunity to express its concerns earlier in these proceedings. The petitioner cannot take the opportunity to file a sixth motion in order to address findings that could have and should have been addressed in an appellate brief. Moreover, the record shows that this office granted the petitioner's first motion for the specific purpose of reopening these proceedings and addressing the petitioner's assertions, which were made in an attempt to establish that the petitioner and the beneficiary met the statutory and regulatory requirements at the time the petition was filed. Based on the statement that the petitioner submitted in support of this latest motion, it appears that the petitioner once again seeks to address matters that were already addressed on appeal.

Further, while the petitioner clearly understands that its motion to reopen must be supported by statutes, regulations, or precedent decisions, the petitioner provided no discussion of the facts pertaining to any of the nine court cases it listed in its supporting statement. Therefore, the petitioner has failed to establish that any of the cited cases are relevant to the matter at hand; nor has the petitioner established that these cases support a finding that we misapplied a law or service policy in denying the motion in our latest decision. Contrary to the petitioner's belief, conducting a *de novo* review of the record does not obligate us to repeatedly readjudicate issues that were already addressed on appeal. The petitioner's understanding that we have abused our discretion appears to be entirely premised on the fact that we did not find the petitioner to be eligible for the immigration benefit sought and as a consequence issued an adverse decision. As the petitioner has failed to establish that we committed legal error in our prior decision, we are unable to grant the petitioner's 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 May 1, 2014, 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.

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NON-PRECEDENT DECISION

Page 5

ORDER: The motion is dismissed.