U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 0 3 2015 PETITION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision.** The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. ***Please do not mail any motions directly to the AAO.***

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The petitioner filed an appeal with the Administrative Appeals Office (AAO), which we dismissed. The petitioner subsequently filed a motion to reconsider, a motion to reopen, a combined motion to reopen and reconsider, and a second appeal with our office. We granted the first motion and affirmed our original decision, and we dismissed the second and third motions. Most recently, we rejected the petitioner's second appeal as improperly filed. The matter is now before us for a sixth time on a motion to reopen. The motion will be dismissed.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, 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 operates an 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 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 did not establish that the beneficiary would be employed in a qualifying managerial or executive capacity within one year of the approval of the petition. The director granted the petitioner's subsequent motion to reconsider and affirmed the denial of the petition on November 15, 2011.

We dismissed the petitioner's appeal on December 31, 2012 and further found that the record did not establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. We granted the petitioner's first motion and affirmed our prior decision on August 22, 2013. We dismissed the petitioner's subsequent motion to reopen and combined motion to reopen and reconsider on February 27, 2014 and June 2, 2014, respectively. The petitioner then filed an appeal of our decision to dismiss its combined motion on July 1, 2014, and we rejected the appeal as improperly filed on December 17, 2014. The petitioner filed the instant motion to reopen on January 16, 2015.

I. MOTION REQUIREMENTS

For the reasons discussed below, we will dismiss the motion because the motion does not merit reopening.

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a United States Citizenship and Immigration Service (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

> [T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service*," "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states:

> A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence. . . .

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:[1]

> **Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying petition or application was filed.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

II. DISCUSSION AND ANALYSIS

Pursuant to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding, in this case our office. Our review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts supported by affidavits and documentary evidence to warrant the re-opening the latest decision in this proceeding in which we rejected the petitioner's appeal as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

In reviewing the petitioner's second appeal filed on July 1, 2014, we observed that the petitioner had indicated on the Form I-290B, Notice of Appeal or Motion, its intent was to file an appeal of our previous decision dated June 2, 2014. In rejecting the appeal, we explained that we do not exercise appellate jurisdiction over our own decisions. Rather, we exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003) and subsequent amendments. While we have appellate jurisdiction over Form I-129 nonimmigrant petitions, we had no jurisdiction over the petitioner's second Form

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[1] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

> Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

I-290B because no appeal lies from our dismissal of a prior appeal. Accordingly, we rejected the appeal based on our lack of jurisdiction.

On motion, the petitioner acknowledges that it "elected to file an appeal by checking "b" under part 3 of the former I-290B, rather than a Motion to Reconsider," and that the previous Form I-290B was accompanied by a "Brief in Support of Appeal." The petitioner has not submitted new facts that would warrant re-opening our decision to reject the second appeal, nor does it claim that we improperly rejected the appeal. Therefore, we will dismiss the motion to reopen.

We acknowledge that the petitioner submits 30 evidentiary exhibits, which include evidence to establish its qualifying relationship with the beneficiary's foreign employer, as well as evidence of the company's physical premises and ongoing business activities for the years 2012 through 2014, much of which was previously submitted in support of the petitioner's earlier motions. The petitioner filed this petition seeking to employ the beneficiary in its new office in October 2010. Therefore, evidence of the company's current operations cannot be considered new facts that establish eligibility at the time the underlying petition was filed and cannot meet the requirements of a motion to reopen. If the petitioner believes that it can currently support a qualifying managerial or executive position, it may file a new petition on behalf of the beneficiary without prejudice.

"There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 U.S. 94, 107 (1988). Motions for the reopening 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. *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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The petitioner's motion will be dismissed.

Finally, the motion shall also be dismissed for failing to meet another applicable filing requirement. 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Again, 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 did not meet the applicable filing requirement listed at 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

III. CONCLUSION

The petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a 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, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and our previous decision will not be disturbed.

ORDER: The motion to reopen is dismissed.