



U.S. Citizenship
and Immigration
Services

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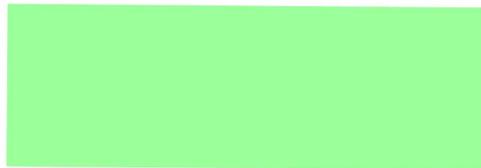


DATE: **JAN 05 2015** Office: CALIFORNIA SERVICE CENTER FILE:

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, California Service Center, denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and we dismissed the appeal. The petitioner subsequently filed a motion to reopen and a motion to reconsider, which we dismissed. The matter is now again before the AAO on a second 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 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 Kansas limited liability company, is self-described as an agriculture business specializing in the production of corn, wheat, and milo. It claims to be an affiliate of the beneficiary's foreign employer in Mexico based on common ownership by the same individual. The beneficiary was previously granted one year in L-1A classification in order to open a new office and the petitioner seeks to extend his status so that he may continue to serve as its Business Operations Director.

The service center director denied the petition on April 17, 2013, concluding that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity. The petitioner appealed the denial and on October 24, 2013, we dismissed the appeal, concluding that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity.

On December 2, 2013, the petitioner filed a motion to reopen and motion to reconsider our decision. We dismissed that motion on April 30, 2014, finding that the motion did not meet the requirements applicable to a motion to reopen or reconsider. The petitioner has now filed a second motion, which it identifies, on the Form I-290B, Notice of Appeal or Motion, as a motion to reconsider.

I. REQUIREMENTS FOR MOTIONS TO RECONSIDER

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states:

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

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not 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, 219 (BIA 1990, 1991) ("Arguments for

consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); *see also Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

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."

II. DISCUSSION AND ANALYSIS

We found in our April 30, 2014 decision that the motion filed on December 2, 2013, did not meet the applicable requirements of a motion to reopen or reconsider set out at 8 C.F.R. § 103.5. In the same decision, we also observed that the motion did not contain a statement pertinent to whether the validity of the unfavorable decision has been or is the subject of any judicial proceeding, which is required by 8 C.F.R. §103.5(a)(1)(iii)(C).

It is this April 30, 2014 decision that is the subject of the motion currently before us. When a motion is filed, 8 C.F.R. § 103.5(a)(1)(i) authorizes us to reconsider or to reopen the *immediate prior* decision which, in the matter of the instant motion, is our decision of April 30, 2014. Therefore, the decisions of April 17, 2013 and October 24, 2013 are not properly under review pursuant to the present motion. Whether to reconsider those decisions will not be considered again unless the petitioner prevails on the instant motion to reconsider our decision of April 30, 2014.

Our April 30, 2014 decision dismissed the December 2, 2013 motion on two bases, finding:

1. The December 2, 2013 motion must be dismissed as it did not meet the applicable requirements of a motion to reopen or reconsider set out at 8 C.F.R. § 103.5, and
2. The December 2, 2013 motion must be dismissed as it did not contain a statement pertinent to whether the validity of the April 17, 2013 decision has been or is the subject of any judicial proceeding, which is required by 8 C.F.R. §103.5(a)(1)(iii)(C).

With the instant motion to reconsider, counsel submitted a brief. Counsel's brief largely addressed the propriety of the director's April 17, 2013 decision denying the visa petition and our October 24, 2013 decision dismissing the appeal of that denial. Counsel's assertions pertinent to those decisions will not be considered because, as was explained above, the propriety of those decisions is not before us.

In the instant case, the petitioner's June 16, 2014 motion failed to clarify that it was addressing the reasoning of our immediately prior decision of April 30, 2014. On the contrary, the petitioner's June 16, 2014 motion was devoted exclusively to challenging the propriety of the director's April 17, 2013 denial and our October 24, 2013 decision dismissing the petitioner's appeal of that decision of denial. Neither of those decisions were properly the subject of the petitioner's June 16, 2014 motion, as it contained no argument pertinent to the

propriety of our April 30, 2014 decision dismissing the motion to reopen and reconsider filed by the petitioner on December 2, 2013.

Again, a motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or 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. *See* 8 C.F.R. § 103.5(a)(3) (detailing the requirements for a motion to reconsider).

Accordingly, the instant motion to reconsider does not address the propriety of our April 30, 2014 decision. The instant motion does not establish that our April 30, 2014 decision was incorrect based on the evidence of record at the time of that decision. Because the instant motion to reconsider does not satisfy the requirements of a motion to reconsider as stated at 8 C.F.R. § 103.5(a)(3), it must be dismissed.

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.

III. CONCLUSION

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 AAO's decision will be affirmed.

ORDER: The AAO's decision dated April 30, 2014 is affirmed.