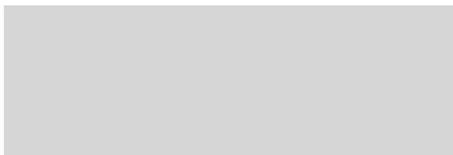




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 30 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 appealed the denial to the Administrative Appeals Office (AAO), and we dismissed the appeal. The matter is now before us on a motion to reopen. The motion will be dismissed.

The petitioner filed a 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 New York corporation established in [REDACTED] operates an import and export company and is a subsidiary of the beneficiary's foreign employer based in China. The beneficiary was previously granted one year in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend her employment as the petitioner's general manager for two additional years.

The director denied the petition, finding that the evidence of record did not establish that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

The petitioner submitted an appeal of the director's decision to this office. We reviewed the record of proceeding and determined it did not contain sufficient evidence to overcome the director's findings.

Specifically, we concluded that the petitioner submitted a vague description of the beneficiary's position that lacked information regarding her specific duties and was therefore insufficient to establish that she would perform primarily managerial or executive duties under the extended petition. We further found that the petitioner had not established to what extent the beneficiary's claimed subordinates relieve her from performing the day-to-day, non-managerial tasks associated with operating the company. Finally, we observed that the petitioner had limited business activities during its initial year of operations and had not established that it had grown to the point where it could support a qualifying managerial or executive position.

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.

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

The petitioner's motion to reopen consists of a brief from the petitioner dated January 20, 2015 and six evidentiary exhibits. The evidence submitted on motion includes: (1) an updated organizational chart; (2) the petitioner's 2012 and 2013 IRS Forms 1120, U.S. Corporation Income Tax Return; (3) copies of the petitioner's state quarterly tax reports and IRS Forms 941, Employer's Quarterly Federal Tax Return, for 2013 and 2014; (4) the petitioner's bank statements from 2014; and (5) copies of contracts, invoices and packing lists as evidence of its ongoing business activities.

Much of the evidence submitted post-dates the filing of the petition, and therefore is not new evidence that could change the result in this case. For example, the petitioner has provided evidence that it hired additional staff subsequent to the filing of the petition and ultimately achieved over \$1.7 million in sales for the fiscal year ending on February 28, 2014. However, the relevant facts to be considered are those that existed when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The petitioner objects to our finding that it did not describe the beneficiary's duties in sufficient detail and refers to the position description it provided in response to the director's request for evidence (RFE). We note that the referenced position description was quoted in its entirety and discussed at length in our previous

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.

decision. The petitioner further asserts that the beneficiary will allocate 80 percent of her time to managerial duties and 20 percent of her time to "day to day" duties, and submits a brief overview of the beneficiary's duties on a Monday through Friday basis. However, the petitioner has not provided any new facts regarding the beneficiary's duties as of the date of filing that could not have been submitted earlier in this proceeding.

Nevertheless, the petitioner contends that since March 2013, it has had sufficient staff to allow the beneficiary to allocate 80 percent of her time to managerial duties, while lower-level employees provided the services and sales function of the company. The petitioner's IRS Form 941 and Form NYS-45, Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the third quarter of 2013 are submitted for the first time on motion, as are the petitioner's 2013 IRS Form W-2s. These documents do not support the petitioner's claims that it had lower-level employees in place to relieve the beneficiary from performing non-managerial functions at the time the petition was filed in July 2013. In response to the RFE, the petitioner submitted an organizational chart identifying the following subordinate staff: a general manager assistant; a finance department/office director; a business development director; a sales employee; and a clerk (customer service). The petitioner's Form NYS-45 shows that the petitioner did not pay wages to the general manager assistant, finance/office director, or the sales person during the third quarter of 2013. Moreover, the IRS Form W-2s reflect that the petitioner's employees did not receive wages commensurate with their claimed full-time employment during 2013. Therefore, even if we re-opened this matter to consider this newly submitted evidence, it would not change the result of the case.

"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).

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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.