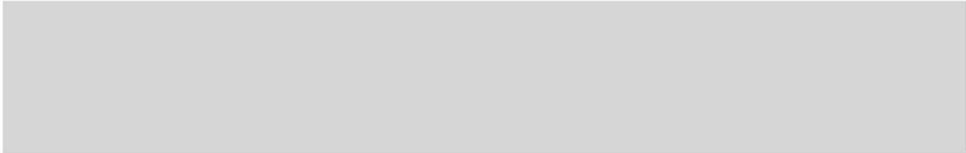




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 18 2015**

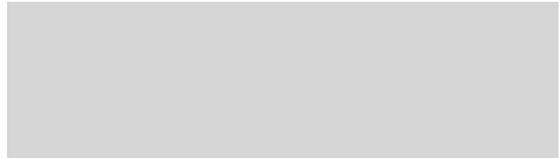
PETITION RECEIPT #: 

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:



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 again 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 extend the beneficiary's status 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, stated that it operates an electronic equipment export and freight forwarding business. The petitioner indicated that it is a subsidiary of [REDACTED] located in Brazil. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's general manager.

The director denied the petition to extend the beneficiary's status, concluding that the petitioner did not establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

We dismissed the petitioner's subsequent appeal in a decision issued on September 29, 2014. We reviewed the record of proceeding and determined that it did not contain sufficient evidence to establish that the beneficiary will act in a qualifying managerial or executive capacity in the United States. Specifically, we noted that the petitioner submitted a vague duty description for the beneficiary that did not convey his actual day-to-day duties. Further, we found that the petitioner's staffing levels and organizational structure were insufficient to support the beneficiary in a qualifying capacity as of the date of the filing of the petition. We noted that the petitioner's future hiring plans were not relevant to the beneficiary's eligibility as of the date of the filing of the petition. We further pointed to the fact that the petitioner provided vague and generalized duties for the beneficiary's asserted subordinates and had not substantiated its claim that it had sufficient operational subordinates to relieve the beneficiary from primarily performing non-qualifying duties.

I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that the current motion does not merit reopening the matter.

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 U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding 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, 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 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 submission constituting the motion includes the following: (1) a letter signed by the petitioner's counsel; (2) the Form I-290B; (3) a two-page brief; and (4) additional documentary evidence. The petitioner asserts that this evidence establishes that "the beneficiary meets the criteria of a managerial position."

The relevant documentary evidence consists of the following:

- (1) an additional petitioner support letter dated September 18, 2014;
- (2) the petitioner's 2014 organizational chart;
- (3) petitioner bank statements from January through September 2014;

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.

- (4) invoices from various vendors reflecting the purchase of goods by the petitioner in 2014;
- (5) the petitioner's 2013 IRS Form 1120, U.S. Corporation Income Tax Return (previously submitted);
- (6) 2013 and 2014 State of Florida Department of Revenue quarterly wage reports (those from 2013 being previously submitted);
- (7) documentation reflecting the petitioner's employees, positions and salaries during 2013 and 2014 (that from 2013 being previously submitted);
- (8) IRS Forms 941, Employer's Quarterly Federal Tax Returns for 2013 (previously submitted) and for the first three quarters of 2014;
- (9) payroll checks issued to the petitioner's employees throughout 2014;
- (10) the petitioner's IRS Forms W-2, W-3, and 1099 for 2013 (previously submitted);
- (11) invoices from vendors for accounting and marketing services in 2014; and
- (12) a commercial lease agreement that commenced on September 1, 2014.

Upon review of the evidence, we observe that all of the newly submitted evidence is dated in 2014. As such, this newly submitted evidence is not relevant to determining whether the petitioner employed the beneficiary in a qualifying managerial or executive capacity as of the filing of the petition on October 21, 2013. 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). Otherwise, the petitioner resubmits evidence that was previously considered by this office in denying the petition. Therefore, this cannot be considered the presentation of new facts as necessary to support a motion to reopen.

Furthermore, we note that the petitioner has not addressed any of the grounds for dismissal set forth in our previous decision with new evidence. For instance, the petitioner has not submitted evidence to clarify the vague duty descriptions submitted for the beneficiary or his subordinates. The petitioner has submitted no new evidence relevant to its operations as of, or prior to, the date of filing of the petition. The petitioner has not provided evidence to corroborate that the beneficiary's claimed subordinates relieved him from primarily performing non-qualifying operational duties, including addressing why the duties of the beneficiary's subordinates set forth no day-to-day operational duties specific to the operation of its claimed electronics export business. As noted in our previous decision, the company had only one operational employee at the time of filing; therefore, it is reasonable to believe that its claimed executive staff members were in fact performing lower-level tasks in order for the company to operate. Although the petitioner asserted on appeal that the petitioner's operations were supplemented by independent contractors performing the operational functions of the business, the petitioner submitted no supporting evidence to substantiate this assertion on appeal, and has again not done so on motion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

As indicated in our previous decision, the regulation at 8 C.F.R. § 214.2(1)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. Here, we reviewed the record according to the applicable regulations and determined that the petitioner did not establish, at the time the extension petition was filed, that the company had grown to the point where it required the beneficiary to perform primarily managerial or executive duties. On motion, the petitioner has not submitted any new evidence to warrant the reopening of this conclusion.

"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.

III. CONCLUSION

The petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen 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 proceeding will not be reopened, and our previous decision will not be disturbed.

ORDER: The motion is dismissed.