



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-P- CORP.

DATE: JAN. 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Florida corporation intending to engage in the sale of medical equipment, seeks to employ the Beneficiary as its President/CEO as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The Petitioner appealed the denial to our office, and we dismissed the appeal. The matter is again before us on a motion to reopen. The motion will be denied.

The Director's denial of the petition, dated September 8, 2014, concluded that the evidence of record did not establish that the Petitioner would be able to support the Beneficiary in a primarily managerial or executive position at the end of its first year of operations. The Petitioner submitted an appeal of the Director's decision to our office. We reviewed the record of proceedings and determined that it did not contain sufficient evidence to overcome the Director's basis for denial. We provided a comprehensive analysis of the Director's decision and dismissed the appeal.

### I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this motion to reopen will be denied 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 U.S. Citizenship and Immigration Services (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 4 of the Form I-290B, which states:<sup>1</sup>

**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

The submission constituting the motion to reopen consists of: (1) the Form I-290B, Notice of Appeal or Motion and supporting two-page brief; (2) a copy of our decision dated June 19, 2015; and (3) copies of two letters, both dated July 17, 2015, from the Petitioner’s counsel to USCIS requesting disclosure of information pertaining to the instant petition under the Freedom of Information Act (FOIA) and the Privacy Act.

Upon review, we find that the Petitioner did not provide any new facts in this motion. On motion, the Petitioner requests that we reopen the proceedings and grant an extension to submit additional evidence, noting that it “did not have the full thirty three days to file a motion” and that it recently retained new counsel, noting that counsel has “many files and documents to review.”

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<sup>1</sup> 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.

The requirements for a motion to reopen are described at 8 C.F.R. § 103.5(a)(2). Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for the submission of a brief and/or additional evidence after the filing of an *appeal*, the regulations contain no similar provision for the filing of a *motion*. In other words, in the case of a motion to reopen, the Form I-290B and any brief and/or additional evidence must be filed together; the documents submitted with the Form I-290B alone comprise that motion, and they cannot be supplemented at a later date. *See* 8 C.F.R. §§ 103.5(a)(2) and (3); 103.3(a)(2)(vii).

Therefore, while we acknowledge the Petitioner’s extension request, there is no regulatory provision allowing for an extension of time to submit additional documentation in support of a motion. We also note that as of the date of this decision, no supplemental materials have been submitted. The Petitioner’s motion, as currently constituted, does not state any new facts, nor is it supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying petition in this matter was filed. The Petitioner has not demonstrated that the evidence submitted on this motion would change the outcome of this case if the proceeding were reopened.

“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). 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 to reopen will be denied, the proceedings will not be reopened, and our previous decision will not be disturbed.

**ORDER:** The motion to reopen is denied.

Cite as *Matter of M-P- Corp.*, ID# 15402 (AAO Jan. 21, 2016)