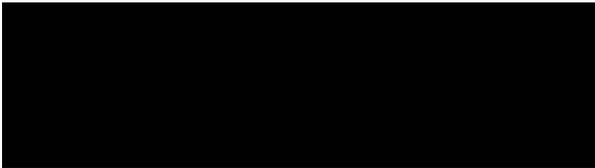




U.S. Citizenship
and Immigration
Services



D7

File: EAC 07 211 51302 Office: VERMONT SERVICE CENTER Date:

DEC 02 2009

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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 Mississippi corporation, states that it is a private investment company. It operates a gas station/convenience store and a discount tobacco store. The petitioner claims to be a subsidiary of [REDACTED], located in Mumbai, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States in 2002 and was subsequently granted two extensions of status. The petitioner now seeks to extend the beneficiary's L-1A status for two additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The AAO dismissed the petitioner's appeal on February 3, 2009. The AAO concurred with the director's determination that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The AAO conclusions were based on the petitioner's failure to submit a detailed description of the beneficiary's duties, and its failure to establish that it employs sufficient subordinate staff to relieve the beneficiary from performing the day-to-day administrative and operational functions of the business. The AAO devoted more than ten pages of text to a discussion of these deficiencies.

On motion, counsel for the petitioner submits a brief, in which he states that the motion is "based on recent business expansion by [the petitioner] which will clearly demonstrate the beneficiary will be employed in an [*sic*] managerial capacity." The petitioner submits evidence pertaining to the petitioner's acquisition of a business, "Papa's Pizza of McCom," in the spring of 2009, and payroll records for the newly-acquired business.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (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.

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."

The instant motion consists of a Form I-290B, Notice of Appeal or Motion, counsel's brief, and documentary evidence related to the petitioner's acquisition of a business in the spring of 2009.

The petitioner does not provide any new facts to be considered in the reopened proceeding. The instant petition was filed in July 2007. 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. 1978). The petitioner's acquisition of a business nearly two years after the petition was filed is not a "new fact" that could establish eligibility as of the date the petition was filed. Accordingly, the petitioner's motion does not meet the requirements of a motion to reopen.

Furthermore, counsel neither states a clear reason for reconsideration nor provides any precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy. Counsel makes no reference to the detailed findings made in the AAO's decision and the specific deficiencies remarked upon therein. Rather, the basis for the motion is to request a new determination regarding the beneficiary's employment capacity based on the petitioner's business operations and staffing levels as of 2009. As noted above, 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. Accordingly, the motion does not meet the requirements of a motion to reconsider.

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 and will be dismissed for this additional reason.

Motions for the reopening or reconsideration 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. *See 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." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.