



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[Redacted]

File: [Redacted] Office: VERMONT SERVICE CENTER Date: **JAN 30 2001**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[Redacted]

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a Massachusetts corporation that claims to be involved in import, export, computer retail and service, and international trade. It seeks to employ the beneficiary as its president and, therefore, endeavors to classify him as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner failed to establish that a qualifying relationship exists between the U.S. and foreign entity, and that the beneficiary is currently and will continue to be employed in a primarily executive or managerial capacity. On July 17, 1998, the Associate Commissioner affirmed the director's reasoning in his dismissal of the appeal.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceedings, supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(3) requires that a motion to reconsider 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 Service policy. A motion to reconsider a decision must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel submits a brief. The petitioner submits a copy of a stock certificate, a copy of its stock ledger, and statements from the alleged foreign entity that were submitted in support of the beneficiary's L-1A visa extension application. The documents submitted on motion, including counsel's brief, relate to the issue of whether a qualifying relationship exists between the U.S. and foreign entities. Neither counsel nor the petitioner provides any evidence on motion concerning the issue of whether the beneficiary is currently and will continue to be employed in a primarily executive or managerial capacity.

The motion does not meet the requirements of a motion to reopen or a motion to reconsider for the following reasons:

First, neither counsel nor the petitioner state any new facts to be considered on the issue of the beneficiary's employment with the U.S. entity, which both the director and the Associate Commissioner determined is neither primarily managerial nor primarily executive. This particular issue is not addressed on motion, even though it is a basis for the denial of the petition and the dismissal of the

appeal. Although the petitioner submits documents from the alleged foreign entity, which were not previously submitted, these documents do not present any new facts regarding whether a qualifying relationship exists.

Second, the focus of counsel's brief is on an argument that the I-140 petition must be approved because a prior L-1A nonimmigrant visa petition was approved. This is an argument counsel raised on appeal, which was dismissed by the Associate Commissioner. Counsel does not present any precedent decisions to support its claim that the prior decision should be reconsidered because the Associate Commissioner misapplied the law or Service policy.

As stated in the dismissal of the appeal, if the previous L-1A nonimmigrant petition was approved based on the same unsupported assertions that are contained in the immigrant petition, the approval would constitute clear and gross error on the part of the Service. As established in numerous decisions, the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988).

8 C.F.R. 103.5(a)(4) states, in pertinent part, that the Service shall dismiss any motion that does not meet applicable requirements. As neither the petitioner nor counsel provides any new facts to be considered on appeal, or provides any precedent decisions to establish that the previous decisions were based on an incorrect application of law or Service policy, the motion must, therefore, be dismissed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed.