



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



PUBLIC COPY

File: WAC 97 240 50658

Office: California Service Center

Date: FEB 12 2001

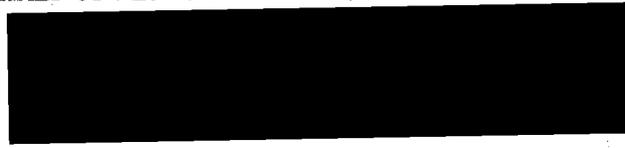
IN RE: Petitioner:

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)

IN BEHALF OF PETITIONER:



Identification is required
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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner, an import/export company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its chief financial officer. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

Additional documentation was provided on appeal.

The Associate Commissioner for Examinations dismissed the appeal, reasoning that the petitioner had submitted insufficient evidence to establish that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, counsel claims that the beneficiary had actually been employed as president and chief executive officer at the time the petition was filed, and submits a description of the beneficiary's duties as president of the U.S. entity.

8 C.F.R. 103.2(b)(13) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed."

8 C.F.R. 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

The petition was signed by the petitioner on August 27, 1997, and filed with the California Service Center on September 14, 1997. At the time the petition was filed, the petitioner claimed that [REDACTED] was its President and Chief Executive Officer, and that the beneficiary had been and would be employed as its chief financial officer. In a brief dated December 8, 1997, counsel stated that the beneficiary had previously been employed as the U.S. entity's chief financial officer, but is now employed as its financial manager. As an attachment to a subsequent case status inquiry, the petitioner submitted its most recent organizational chart dated May 5, 1999, showing that [REDACTED] was president of the U.S. entity, and that [REDACTED] was still employed as its chief financial officer. On motion, counsel contradicts his December 1997 brief and claims that the beneficiary "replaced [REDACTED] as President and Chief Executive Officer of the corporation in September, 1997."

None of the contradictory claims regarding the beneficiary's actual job title and duties has been explained. Doubt cast on any aspect

of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

It is unclear what the beneficiary's job title and duties actually have been and will be. Nevertheless, at the time the petition was filed, the petitioner claimed that the beneficiary had been and would be employed as its chief financial officer. The information submitted on motion describes the beneficiary's duties in an entirely different position as president of the U.S. entity, and does not demonstrate the beneficiary's eligibility as chief financial officer as stated at the time the petition was filed. 8 C.F.R. 103.2(b)(12). For this reason, the documentation submitted on motion will not be considered in this proceeding.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, *supra* at 323 (citing INS v. Abudu, 485 U.S. at 107-108). A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, *supra* at 110.

In visa petition proceedings, 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 sustained that burden.

ORDER: The motion is dismissed.