



U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

Public Copy

File: LIN 99 024 50002 Office: Nebraska Service Center Date: JAN 18 2001

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

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)

Identifying data deleted to prevent clearly unwarranted invasion of privacy

IN BEHALF OF PETITIONER:
[Redacted]

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 nonimmigrant visa petition was denied by the Director, Nebraska 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 and reconsider. The motion will be dismissed.

The petitioner, a manufacturer of corrugated boxes, (recently branched into a liquor store, computer sales, and dental goods), seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities, and that the beneficiary has been and will be employed in the U.S. in a primarily managerial or executive capacity. The director also determined that the petitioner had not established that the U.S. operation, within one year, would support a managerial or executive position. However, this issue is not an issue for consideration in a petition for extension of previously approved employment and should have been discussed in connection with the adjudication of the original petition. Consequently, this issue will not be discussed in this proceeding.

On appeal, counsel submitted additional evidence in support of the appeal.

The Associate Commissioner for Examinations dismissed the appeal, finding that the petitioner had submitted insufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities, and that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, counsel resubmits documentation already contained within the record and a series of charts that were prepared by the petitioner.

8 C.F.R. 103.5(a)(2) states, in pertinent part, that 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.

8 C.F.R. 103.5(a)(3) states, in pertinent part:

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 Service 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.

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

As noted above, counsel submits letters that are already contained within the record. Counsel also submits several charts which were prepared by the petitioner. The petitioner claims that these charts establish that there is a qualifying relationship between the U.S. and foreign entities. Internally generated letters and charts do not take the place of independent evidence demonstrating that there is a qualifying relationship between the U.S. and foreign entities. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The share certificates initially submitted by the petitioner do not establish that there was a qualifying relationship between the U.S. and foreign entities at the time the petition was filed, nor has the petitioner submitted further evidence on motion that would establish this.

Inasmuch as the motion fails to state the new facts to be provided, and is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy, the motion will be dismissed in accordance with 8 C.F.R. 103.5(a)(4).

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.