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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



Public Copy

FILE: EAC-98-057-51254

OFFICE: Vermont Service Center

DATE: JUN 18 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 USC 1101(a)(15)(L)

IN BEHALF OF PETITIONER: Self-represented

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 decision, 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

*for Myra L. Rosenberg*  
Robert V. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Acting 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. The motion will be dismissed.

The petitioner, a company trading chemicals and industrial products between China and the United States, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The Acting Director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. Further, the director determined that the petitioner had not demonstrated that the Parent Company had been engaged in the regular, systematic and continuous provision of goods and/or services. Finally, the director ruled that the evidence had not demonstrated that the company abroad had employed the beneficiary in a managerial or executive capacity.

On appeal, the petitioner argued that the INS erred in its denial of the petition.

The Associate Commissioner found that the director erred in ruling that the petitioner had failed to demonstrate that the beneficiary had been employed abroad in a managerial or executive position. The Associate Commissioner ruled that, because the instant matter is a petition for extension, the issue of the beneficiary's employment abroad should have been discussed in the initial petition, and is not an issue in this proceeding.

The Associate Commissioner dismissed the appeal reasoning that the evidence submitted by the petitioner had not shown that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The Associate Commissioner also found that the petitioner had failed to demonstrate that the foreign company was engaged in the regular, systematic and continuous provision of goods and/or services.

On motion, the petitioner argues that the petitioner submitted various documents which had been previously submitted with the petition.

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

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 decision 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.

Inasmuch as the motion fails to cite 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).

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.