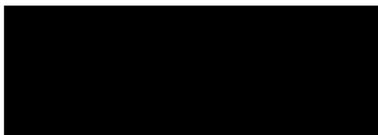




U.S. Department of Justice  
Immigration and Naturalization Service

**DM**

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

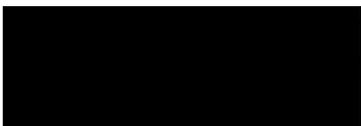


File: EAC 99 131 51877

Office: Vermont Service Center

Date: **MAR - 6 2001**

IN RE: Petitioner:  
Beneficiary:



**PUBLIC COPY**

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 data contained is  
prevent clearly uncorrelated  
maximum 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, 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 and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner, a wholesale distributor of medicine, seeks to employ the beneficiary temporarily in the United States as its vice president. The director determined that the petitioner had not established that the beneficiary had been employed in a primarily managerial or executive capacity for one continuous year in the three year period preceding the filing of the petition, or that the beneficiary would be employed in the U.S. in a primarily managerial or executive capacity.

On appeal, counsel states that "[p]etitioner is aggrieved by the decision of the District Director. District Director has erred both in fact and law."

The Associate Commissioner dismissed the appeal reasoning that the Service's finding was based on the petitioner's own statements, and that, based on the evidence presented, the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. The Associate Commissioner also noted that, beyond the decision of the director, the record did not demonstrate that sufficient physical premises to house the new office had been secured, or that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

On motion, counsel briefly states that the "Associate Commissioner of the AAU erred both in terms of fact and law, and as such, Petitioner, [REDACTED], BEING AGGRIEVED by the said decision of the AAU, submits this Motion to Reopen and Reconsider the decision in the case." Although counsel stated that a legal brief would be provided to elaborate on the petitioner's argument, no such brief has been received by this office in the nine months since the filing of this appeal. Therefore, the petitioner has not overcome the objections of the district director or the Associate Commissioner for Examinations.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The decision of the Associate Commissioner dated April 5, 2000, is affirmed.