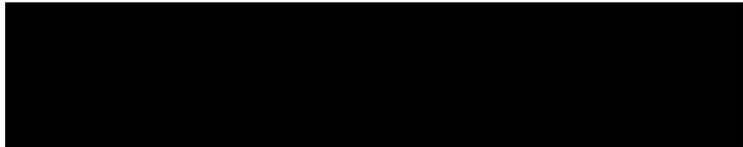




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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC-99-053-51493

Office: Vermont Service Center

Date: MAR 30 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:



Public Copy

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*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

Identifying data added to prevent clearly unwarranted invasion of personal privacy

**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 dismissed.

The petitioner, an import/export and manufacturing company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its managing director. The director determined that the petitioner had not established that a qualifying relationship existed between the U.S. and foreign entities, that the beneficiary had been or would be employed in a primarily managerial or executive capacity, that the beneficiary had been employed abroad continuously for one year within the three years preceding his entry into the United States, or that the U.S. operation, within one year, would support a managerial or executive position.

On appeal, counsel argued that the petitioner would show that the Service's decision to deny the petition was made contrary to the facts or laws presented in the case at hand.

The Associate Commissioner found that the beneficiary's foreign employment and whether the U.S. operation, within one year, would support a managerial or executive position were not issues for consideration in a petition for extension of previously approved employment and therefore would not be discussed in his decision. The Associate Commissioner also found that the petitioner had established on appeal that a qualifying relationship existed between the U.S. and foreign entities. The Associate Commissioner dismissed the appeal, however, reasoning that the petition could not be approved as the qualifying relationship had not been shown to have existed at the time of the filing of the petition, as required by 8 C.F.R. 103.2(b)(12), and the evidence had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, counsel states in part that:

Petitioner has new and additional evidence which was not previously presented which it wishes to have considered.

Petitioner will file a brief with the new and additional information at a later time.

Counsel had indicated that additional evidence would be submitted in support of the motion at a later time. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

8 C.F.R. 103.5(a)(3) and (4) state in part that:

*Requirements for motion to reconsider.* 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 a application or decision must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

*Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed.

As the petitioner has provided no additional evidence on motion to overcome the decision of the director, the motion shall be dismissed in accordance with 8 C.F.R. 103.5(a)(4).

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. In accordance with 8 C.F.R. 103.5(a)(4), the motion will be dismissed.

**ORDER:** The motion is dismissed.