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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-99-027-52042

Office: Vermont Service Center

Date: MAY 09 2002

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

Myrna L. Rosenberg
for Robert P. Wiemann, 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 was put before the Associate Commissioner for Examinations on motion to reopen. The motion was granted and the previous decision of the Associate Commissioner was affirmed. The matter is again before the Associate Commissioner for Examinations on motion to reopen. The motion will be dismissed.

The petitioner is an importer and wholesaler of general merchandise. It seeks to extend its authorization 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 or would be employed in the United States in a primarily managerial or executive capacity, or that the U.S. entity is doing business. The Associate Commissioner affirmed the director's reasoning in his January 27, 2000 dismissal of the appeal.

On motion, counsel states that he will send a brief and/or evidence within 60 days. It is noted that counsel made this statement on October 2, 2000 and as of this date, no additional evidence has been received into the record. Therefore, the record must be considered complete.

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

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) 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 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.

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

The petitioner's motion does not meet applicable requirements. Counsel neither states the new facts to be proved nor states the reasons for reconsideration. Instead, counsel explains in a November 8, 2000 letter that the petitioner shall submit new facts to be proved and other documentary evidence within 30 days. While

8 C.F.R. 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or additional evidence in conjunction with the filing of an appeal, there is no similar provision for a motion to reopen or reconsider; the new facts or reasons for reconsideration must comprise the motion. As neither the petitioner nor counsel provides new facts for the Service to consider regarding whether the proffered position can be classified as executive or managerial, the motion will be dismissed.

As always, 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 met that burden.

ORDER: The motion is dismissed.