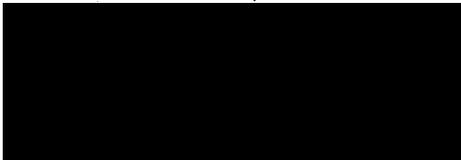


U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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prevent clearly unwarranted
invasion of personal privacy

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



File: WAC-97-240-50658 Office: California Service Center Date:

APR 11 2003

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

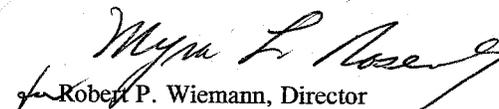
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion to reopen and reconsider was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner, an import/export company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its chief financial officer. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

Additional documentation was submitted on previous motion.

The AAO dismissed the first motion, stating in pertinent part, that:

It is unclear what the beneficiary's job title and duties actually have been and will be. Nevertheless, at the time the petition was filed, the petitioner claimed that the beneficiary had been and would be employed as its chief financial officer. The information submitted on motion describes the beneficiary's duties in an entirely different position as president of the U.S. entity, and does not demonstrate the beneficiary's eligibility as chief financial officer as stated at the time the petition was filed. 8 C.F.R. § 103.2(b)(12). For this reason, the documentation submitted on motion will not be considered in this proceeding.

On current motion, the petitioner continues to claim that the beneficiary has actually been employed as president and chief executive officer at the time the petition was filed in September 14, 1997. Counsel further states, in pertinent part, that:

Since [named individual's] departure on August 30, 1996, the beneficiary has actually replaced [named individual] as the President & CEO of [redacted] (USA), Inc., managing the daily operations of the company. Under her past 4.5 years' management, the company's annual sales grew from 0 in the beginning to nearly 2 million dollars today.

On September 3, 1997, the Board of Director's of [redacted] (USA), Inc. formally elected [the beneficiary] as the President and Chief Executive Officer... Please also find attached the Organization Chart updated in September 1997, Exhibit 3, which clearly shows that [the beneficiary] has replaced [named individual] as the President and Chief Executive Officer of the corporation,

who only reports to the Chairman of the Board, and is the highest functioning executive officer of the corporation.

When we filed for the last appeal for [the beneficiary] L-1 visa extension, we mistakenly submitted the original organization chart written in August 1996, which does not reflect the changes in the positions.

The petitioner submits a "balance sheet" and an "income statement" for the same period ending June 30, 2000, "Minutes of the Board of Directors" meeting dated September 3, 1997, naming the beneficiary as the petitioner's new president and CEO, as well as an organizational chart, job description, and other documents reflecting that the beneficiary is president and CEO of the petitioner. The petitioner also submits a 1999 Corporate Income Tax Return signed by [REDACTED] as "president" of the petitioner.

Regulations at 8 C.F.R. § 103.2(b)(12) state, in pertinent part: "an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed."

Regulations at 8 C.F.R. § 103.5(a)(2) state, 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.

Regulations at 8 C.F.R. § 103.5(a)(3) state, 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.

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

The record continues to contain contradictory claims regarding the beneficiary's job title and duties. The petitioner has not addressed those numerous discrepancies in asserting the beneficiary's eligibility. Rather, a review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been, or in one instance was, discovered or presented in the previous proceeding.

It is further noted that the petitioner fails to credibly address the reason(s) for denial by both the director and the AAO. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Further, the petitioner has submitted no evidence sufficient to support any conclusion that the previous decisions were based on an incorrect application of law or Service policy.

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, 502 U.S. 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, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be dismissed.

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).

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