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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

NOV 07 2003

FILE: EAC 00 152 51286 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

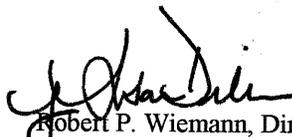
**INSTRUCTIONS:**

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is in the business of importing and distributing stuffed toys and sunglasses. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its design manager. 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 petitioner had provided compelling evidence that the United States entity is doing business.

On appeal, counsel argued that the evidence submitted in support of the petition and in response to the director's request for additional evidence, demonstrated that the petitioner had maintained a business presence in the United States. Counsel further maintained that the petitioner is a substantial entity with a need for an individual like the beneficiary to perform managerial services. Counsel asserted that the beneficiary had previously been approved for a L-1A visa, and that nothing had changed except for an increase in gross annual income. Counsel concluded by stating that the beneficiary was a designing manager.

The AAO dismissed the appeal, reasoning that the petitioner had not submitted sufficient evidence to establish that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The AAO continued by stating that the petitioner had provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary would be managing the organization, or managing a department, subdivision, function, or component of the company. The AAO also stated that Citizenship and Immigration Services (CIS) was not required to approve applications or petitions where eligibility had not been demonstrated, merely because of prior approvals that may have been erroneous. The AAO concluded by stating that the petitioner had not shown that the beneficiary had been or would be functioning at a senior level within an organizational hierarchy other than in position title.

The AAO also noted that the petitioner had submitted sufficient evidence to establish that it had maintained a business presence in the United States, overcoming the director's decision.

On motion, petitioner states that the denial of the petition by the AAO was "erroneous." The petitioner also asserts that, based upon all evidence submitted, it has been clearly established that the beneficiary is a professional who supervises the activities of other professionals. The petitioner continues by stating that the beneficiary manages the design function of the U.S. entity and that she continues to oversee the production and design functions of the parent company abroad. The petitioner submits no additional documentary evidence on motion to substantiate the contentions.

The regulation at 8 C.F.R. § 103.5(a)(2) states, 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.

The regulation at 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 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.

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

In the instant case, the petitioner's brief on motion does not contain any new facts and is unsupported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy. Therefore, 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 solely 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.