

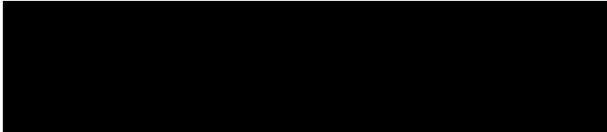
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: EAC 97 214 51872

Office: VERMONT SERVICE CENTER

Date:

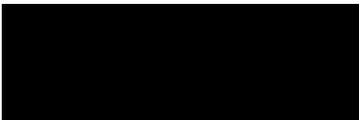
**NOV 17 2003**

ON 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:



**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 approval of the nonimmigrant visa petition was revoked 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 a motion to reopen and reconsider. The motion will be granted. The previous decisions of the director and the AAO will be affirmed.

The petitioner is an import/export and investment company that seeks to continue to employ the beneficiary temporarily in the United States as its general manager. 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.

On appeal, the petitioner argued that the previous submissions established that the beneficiary had been or would be employed in a managerial capacity. The petitioner also argued that the Notice of Intent to Revoke issued in this matter did not give sufficient notice of the basis upon which the director ultimately denied the petition. The petitioner also argued that denying the petition contravened public policy.

On motion, the petitioner again argues that the director's Intent to Revoke did not give sufficient notice of the basis upon which the director ultimately denied the petition. The petitioner also states that it did not receive the notice of intent to deny and the decision of denial at all throughout the entire petition process.

In the AAO order dated August 6, 2001 a full analysis of the director's notice of intent to deny was provided. It was determined that the notice provided sufficient notice of the basis upon which the director denied the petition. Additionally, in his brief in support of the appeal to the director's March 14, 2000 order denying the visa petition, counsel correctly acknowledged that the issue presented was "has and will the beneficiary be employed in a managerial capacity." It is determined that the petitioner, through counsel, received the director's decision to revoke the approval of the visa petition because the petitioner filed a timely appeal to that decision and specifically addressed the reasons for revocation.

On motion, the petitioner argues that in the absence of gross error, the CIS must find that the beneficiary is eligible for L-1A status because the petitioning corporation's situation has improved significantly. In this case, the petitioner must establish eligibility at the time of filing; See 8 C.F.R. § 103.2(b)(12); *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998). Consequently, the situation of the U.S. corporation after the visa petition was filed is not a factor in this determination.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state new facts to be provided

and be supported by affidavits or other documentary evidence. The only new evidence forwarded with this motion is a new organizational chart for the corporation and an affidavit by the beneficiary outlining his current job duties and providing current information concerning the business and his family situation.

The petitioner's descriptions of the beneficiary's projected job duties are fully described in the latest AAO decision dated August 6, 2001 and will not be repeated here. No further evidence concerning the beneficiary's job duties were provided on this motion.

The petitioner has failed to state any new facts or to provide new evidence regarding the beneficiary's duties with the U.S. entity as of August 7, 1997, the filing date of the petition. For these reasons, the petition may not be approved.

**ORDER:** The decision of the AAO dated August 6, 2001 is affirmed.