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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



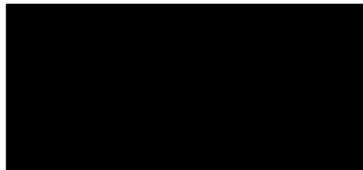
File: WAC 00 108 52077 Office: CALIFORNIA SERVICE CENTER Date: **SEP 12 2003**

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:



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 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, California 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 decision of the AAO will be affirmed.

The petitioner is an import/export firm conducting international trade and developing markets for various types of bare copper wires in the United States. It seeks to continue to employ the beneficiary temporarily in this country as its president for an additional two-year period. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

Counsel is advised that this motion was filed on a Form I-290B (Notice of appeal to the Administrative Appeals Unit (AAU)) in error. The motion should have been filed on counsel's letterhead.

On appeal, counsel argued that the beneficiary had been functioning in a managerial capacity and would continue to do so. The AAO affirmed the director's determination that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. Beyond the decision of the director, the AAO determined that the petition's business location was unclear as was the issue of whether the beneficiary was working at the U.S. entity or primarily attending English-language classes.

On motion, counsel argues that the beneficiary had been working and would continue to work in a managerial capacity. Counsel further states that a brief and/or evidence will be sent to AAU within 30 days.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in 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 regulations at 8 C.F.R. § 103.5(a)(3) state that 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 regulations at 8 C.F.R. § 103.5(a)(4) state, in part, that a motion that does not meet applicable requirements shall be dismissed.

In this case, the motion was submitted on April 19, 2001. However, on that date the motion did not state any new facts and support them with affidavits or other documentary evidence. Nor was the motion supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or Service policy. A motion must have all the affidavits or other documentary evidence submitted with it. There is no provision for submitting a brief and/or further evidence after the motion is filed. As this motion did not meet applicable requirements, it must be dismissed.

ORDER: The motion is dismissed.