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

207

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



File: EAC 96 038 53502 Office: VERMONT 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 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). A subsequent motion to reopen and reconsider was granted by the AAO, and the previous decision was affirmed. A second, third and fourth motion were also dismissed by AAO. The matter is again before the AAO on a fifth motion. The motion to reopen will be granted and the previous decisions of the director and the AAO will be affirmed.

The petitioner imports, wholesales, and distributes shoes, umbrellas, raincoats and other goods from China. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice president of international marketing. The director determined that the petitioner had not established that the beneficiary would be employed primarily in a managerial or executive capacity. The director's decision was affirmed by the AAO.

In the present motion, the petitioner submits a "Letter of Appointment" dated January 8, 2002 which indicates that the beneficiary is the managing director of the petitioning firm in New York and that he is in charge of importing umbrellas to the United States. The letter also indicates that his primary duties include overseeing all operational duties of the company in the United States. The petitioner indicates that under the beneficiary's management the sales of the company have increased rapidly. The petitioner submits company sales and financial data from 1999 to February 2002.

The petition was filed on December 8, 1995. To establish that the beneficiary qualifies for the requested benefit, the petitioner now submits financial and appointment data for the period from 1999 to 2002. This evidence shall not be considered for purposes of this petition. A 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).

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. Here, that burden has not been met.

ORDER: The previous decisions of the director and the AAO are affirmed; the petition is denied.