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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

SEP 1 2 2003

File: EAC 99 010 50218 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
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:

[redacted]

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 Bureau 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

SEP1203_05D7101

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal and two motions were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a third 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 company that seeks to continue to employ the beneficiary temporarily in the United States as its president. 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. The AAO also found that the petitioner had not submitted sufficient evidence to establish there is a qualifying relationship between the U.S. and foreign entities.

In this third motion, the petitioner argues the latest AAO decision is inconsistent with the precedent decisions of the Service and that the decision lacks legality, justice and credibility. The petitioner states that the questions raised in that decision are ridiculous and without basis and that the decision was irresponsible and "bias to" the firm.

The petitioner objects to the denial of this petition in view of the approval of an L-1 visa petition and subsequent granting of permanent resident status for a vice president of the company. This Service is not required to approve applications or petitions where eligibility has not been demonstrated. The AAO is not bound to follow what might be a contradictory decision of a service center. *Louisiana Philharmonic Orchestra v INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Additionally, the approval of the I-140 immigrant visa petition, in the vice president's behalf, may have been approved in error.

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 sales catalog for a company named [redacted]

The petitioner's descriptions of the beneficiary's projected job duties are fully described in the latest AAO decision dated December 19, 2001 and will not be repeated here. No further evidence concerning the beneficiary's job duties were provided on this motion. Additionally, although the petitioner provides a brief historical summary and argues that there is a qualifying relationship between the petitioner and a parent company overseas, no further evidence is provided.

The petitioner has failed to state any new facts or to provide new evidence regarding the beneficiary's duties with the U.S. entity or of its affiliation with a qualifying entity abroad as of October 7, 1998, the filing date of the petition. For these reasons, the petition may not be approved.

ORDER: The decision of the AAO dated December 19, 2001 is affirmed.