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Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 9 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[REDACTED]

SEP 22 2003

File: LIN-01-133-53335 Office: Nebraska 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)

IN 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 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner operates "rock wall" climbing attractions at amusement parks. It seeks authorization to employ the beneficiary temporarily in the United States as its operations manager. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities.

On appeal counsel states, in pertinent part, that:

The INS (now CIS) regulations expressly permit an alien to enter the United States in L-1A status to "render his or her services to a *branch* of the *same employer*." 8 CFR 214.2(1)(1)(ii)(A). A "branch" is defined as "an *operating division* or office of the *same organization* housed in a different location." The petitioner provided ample evidence that it operates a substantial business in the United States which employs 6 regional managers, 24 site managers, and 350 other staff. The climbing wall attractions are owned and operated by the petitioner and it files state and federal tax returns reporting income from the U.S. operations in each of 16 states. The petitioner clearly has branch operations in the United States. Each climbing wall attraction is a separate *operating division* of the *same organization* housed in a different location and fits squarely within the Bureau's definition of a "branch."

Upon review, the record provides no elaboration as to what criteria the director used in reaching his conclusions that "Since the amusement park attractions are not considered to be branches, there is not a U.S. entity for which the beneficiary can be a manager." Nor does the director elaborate on how he determined that the climbing wall attractions were not branches, but "only representatives of the foreign entity." Bureau regulations and the record as presently constituted do not corroborate the director's findings. The record indicates that [REDACTED]

[REDACTED] a Canadian corporation, owns and operates amusement park attractions in 16 different states within the United States and that such attractions are branches of the Canadian company. Accordingly, this case will be remanded for the director to determine whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee.

The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.