



U.S. Citizenship  
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FILE: EAC 01 272 51573 Office: VERMONT SERVICE CENTER

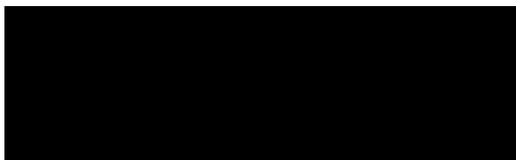
Date APR 12 2004

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently appealed that decision to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner indicates that it is a subsidiary of a company that operates a quarry and a factory of marble, onyx, handcrafted tiles, and slate. The petitioner seeks authorization to employ the beneficiary temporarily in the United States as its president and chief executive officer (CEO). The director determined that the petitioner had not established that it has secured a sufficient space to house the U.S. operation, or that the petitioner will support a managerial or executive position within one year of the petition's approval.

The petitioner disputed the director's findings by filing an appeal. The AAO affirmed the director's decision and dismissed the appeal, stating that the lease submitted by the petitioner on appeal was created after the petition was filed. The AAO also determined that the petitioner failed to provide evidence of the foreign entity's financial investment or its ability to remunerate the beneficiary. The AAO noted, beyond the decision of the director, that the petitioner failed to submit evidence indicating that the foreign entity paid for its ownership of the petitioner's stock and therefore failed to establish that it has a qualifying relationship with the foreign entity.

On motion, the petitioner submits a lease, dated August 1, 2002, altered to fit the petitioner's specific type of business. The petitioner also submits a number of rental contracts, billing invoices, and photocopies of shipping documents.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent 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.

In the instant case, the petitioner's motion is based, in part, on a lease that was signed more than one year after the petition was filed. Precedent case law has well established that eligibility must be established at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the petitioner's submission of a lease that had not been created at the time the petition was filed is irrelevant in the instant proceeding. Counsel's assertion that the AAO's citation is "misplaced," appears to be the result of his misunderstanding of the citation itself. The AAO has no objection to a new office's progression to the next stage of development. However, any events that take place after the filing of the petition cannot be considered for the purpose of determining the petitioner's and beneficiary's eligibility for the benefit sought. Furthermore, although the petitioner submitted invoices and contracts that were dated around the time the petition was filed, such documentation cannot be deemed "new," as similar documents were submitted earlier in this proceeding and were determined, by the director and by the AAO, to be insufficient for the purpose of establishing that the petitioner would support a managerial or executive position within one year of the petition's approval.

The regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

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 CIS 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.

In the instant case, counsel does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

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, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.