



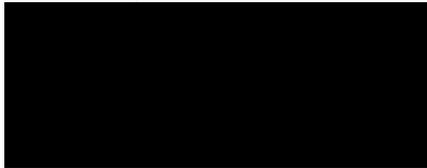
U.S. Citizenship
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FILE: EAC 00 281 51769 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

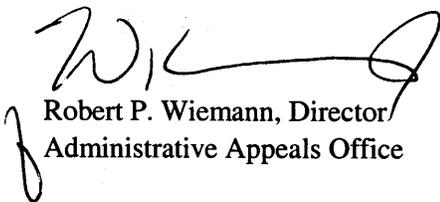
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 granted. The director's denial of the petition, however, will be affirmed.

The petitioner is engaged in the business of importing and distributing premium quality flower bulbs. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary has been and would be employed in a primarily managerial or executive capacity, or that the petitioner had demonstrated sufficient viability to support a managerial or executive position. The petitioner appealed and the AAO affirmed the director's findings. The petitioner now submits a motion disputing the AAO's findings.

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.

The current motion is devoted, in part, to counsel's contention with the AAO's reliance on certain information in the petitioner's tax return for the year 2000 in order to reach the conclusion that the petitioner is not financially able to sustain a managerial or executive position. The AAO based this conclusion, in large part, on the fact that the petitioner's tax documentation failed to indicate that the petitioner had paid the beneficiary's salary.

Counsel addresses this issue and disputes the AAO's point by introducing the case of *Matter of Pozzoli*, 14 I&N Dec. 569 (Reg. Comm. 1974). In that case, the Regional Commissioner determined that receiving a salary from a foreign affiliate while working for the U.S. petitioner does not preclude the beneficiary from qualifying for classification as an intracompany transferee. *Id.*

Based on the above regulation and the case law introduced by the petitioner's counsel, the AAO hereby withdraws its prior conclusion deeming the petitioner financially inadequate. The documentation submitted shows that beneficiary has been compensated by the overseas parent entity. However, the AAO affirms its prior determination regarding the petitioner's failure to establish that the beneficiary has been and will be employed in a managerial or executive capacity. While counsel is correct in stating that "[t]he purpose of the L-1 [visa classification] is to facilitate international trade," the AAO cannot overlook the regulatory requirements imposed by the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(B) and (C) regarding the definitions of "managerial capacity" and "executive capacity," respectively. Each set of requirements mandate that the beneficiary's duties must be *primarily* of a managerial or executive capacity. In the instant case, the AAO thoroughly reviewed the record and determined that it lacks sufficient evidence to conclude that the beneficiary has been and will be relieved from having to perform non-qualifying duties. The petitioner has cited no pertinent case law to determine that the AAO's conclusion in regard to this issue was based on "an incorrect application of law or CIS policy." 8 C.F.R. § 103.5(a)(3).

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, counsel has provided a number of documents regarding the financial status and progress of the petitioner's business. However, these documents relate to the petitioner's circumstances in the years 2002 and 2003, at least two years after the petition was filed. Eligibility must be established at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the documents submitted by counsel on motion are irrelevant in the instant proceeding. If the petitioner desires further consideration of such evidence, it may file a new petition.

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 director's denial of the petition is hereby affirmed.