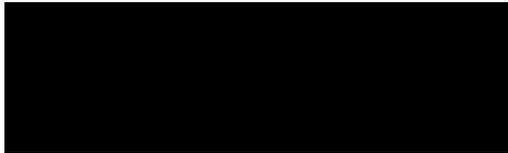


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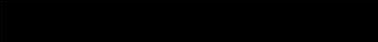
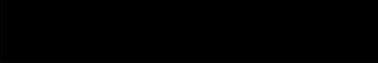
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: EAC 99 234 51511 Office: VERMONT SERVICE CENTER Date: **APR 21 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

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**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 petitioner then filed a motion with the AAO. The AAO affirmed the prior dismissal of the appeal. The matter is before the AAO on another motion to reopen and reconsider. The motion will be dismissed.

The petitioner imports, exports, and trades various products such as electronics and computers between the U.S. and China. 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 would be employed in a primarily managerial or executive capacity.

On appeal, counsel asserted that the director's denial should be withdrawn and the case should be remanded for a new decision.

The AAO dismissed the appeal reasoning that the petitioner had failed to hire any sales people after four years of operation, thereby indicating that the petitioner lacked sufficient professional, supervisory, or managerial personnel to relieve the beneficiary from having to perform non-qualifying duties.

On first motion, counsel claimed that the beneficiary is a function manager and that as a result the petitioner does not need a large staff to avoid performing non-qualifying duties.

On second motion, counsel asks the AAO to consider the reasonable needs of the petitioner and submits evidence of additional business ventures upon which the petitioner has embarked since filing the petition that is the subject of the instant discussion.

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 discusses the beneficiary's involvement in negotiating and executing a contract for the purchase of furniture to further the petitioner's business agenda. However, eligibility must be established at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, counsel's discussion of events that took place several years after the petition was filed are irrelevant in the instant proceeding. If the petitioner desires further consideration of such evidence, the petitioner may file a new petition.

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. Counsel merely suggests that the director and the

AAO failed to consider that the reasonable needs of the petitioner are such that an increased sales force is not currently necessary. However, the reasonable needs of the petitioning organization do not override the petitioner's burden of establishing that the beneficiary performs primarily managerial or executive duties. Moreover, counsel's assertion is not synonymous with pointing out an error of law either on the part of the director or on the part of the AAO. 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.