

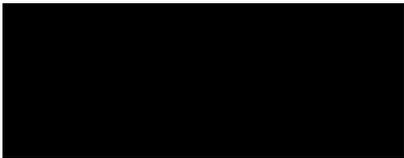


U.S. Citizenship
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FILE: SRC 00 021 50232 Office: TEXAS SERVICE CENTER Date: APR 26 2004

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

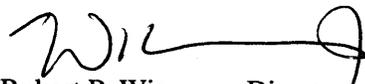
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas 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 is engaged in cargo and freight forwarding services to Ecuador and other destinations in South America. It seeks authorization to employ the beneficiary temporarily in the United States as its president and general manager. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity, or that the petitioner and its foreign counterpart have been doing business.

The AAO determined, on appeal, that the petitioner provided sufficient evidence to establish that it and its foreign counterpart have been doing business. Nevertheless, the AAO dismissed the appeal based on the determination that the petitioner failed to establish that the beneficiary has been and will be performing primarily managerial or executive duties.

On motion, counsel asks the AAO to consider the beneficiary's job duties in light of the current support staff working for the foreign entity.

The regulation at 8 C.F.R. § 103.5(a)(2) states, 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.

However, eligibility must be established at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). In the instant case, counsel's motion is primarily based on factors that are current as of the date of the motion. Therefore, counsel's discussion of events that took place after the petition was filed is irrelevant in the instant proceeding. If the petitioner desires further consideration of such evidence, it may file a new petition.

The regulation at 8 C.F.R. § 103.5(a)(3) states, 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 states that since filing the petition, the petitioner and the foreign entity have expanded their respective operations and hired additional employees as a result of such expansions. However, counsel's introduction of events that took place after the petition was filed 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 that a motion that does not meet applicable requirements shall be dismissed.

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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.