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FILE: SRC 99 068 51978 Office: TEXAS SERVICE CENTER Date: FEB 05 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:
SELF-REPRESENTED

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 nonimmigrant visa petition was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO upheld that dismissal on the petitioner's first motion to reopen and reconsider as well as the petitioner's second motion to reopen and reconsider. The matter is again before the AAO on a third motion to reopen and reconsider. The motion will be dismissed.

The petitioner claims to be an importer and exporter of food to South Africa. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal and in the prior motions, counsel claimed that the beneficiary is employed in a primarily managerial or executive capacity and that the size of the petitioning entity's staff is irrelevant.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

On this third motion, the petitioner indicates his intent to supply additional evidence demonstrating its current state in the United States as well as the beneficiary's position within the company. Although the petitioner states that it will submit additional evidence within 30 days of September 9, 2002, to date there has been nothing further submitted. The AAO notes that, although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. § §103.5(a)(2) and (3).

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.

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 Service 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 regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

In the instant case, the petitioner's motion does not contain any new facts and is unsupported by any pertinent precedent decisions to establish that the prior decisions were based on an incorrect application of law or CIS policy. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.