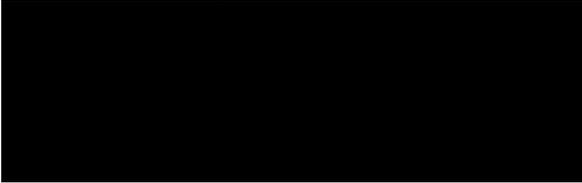


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**U.S. Citizenship
and Immigration
Services**

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE: SRC 02 271 50127 Office: TEXAS SERVICE CENTER Date: JUN 12 2004

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

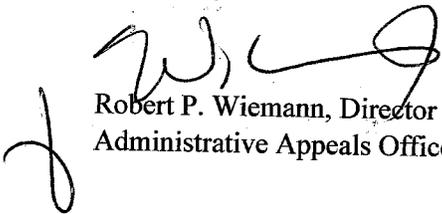
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Louisiana and operating a convenience store. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Pakistan.

In a decision dated December 27, 2002, the director denied the petition stating that the record was insufficient to establish that the beneficiary, as vice-president of operations, would be relieved of performing day-to-day operations by subordinate managerial employees. The director also stated that the record did not demonstrate that the beneficiary would be managing a function of the petitioning organization, but instead would be performing the function. The director therefore concluded that the beneficiary would not be employed by the U.S. entity in a primarily managerial or executive capacity.

In a handwritten appeal filed January 29, 2003, counsel states:

- a) The denial Notice erroneously relies *solely* on the staffing levels of the Company to deny the petition.
- b) The denial Notice fails to consider the actual duties and responsibilities of the position and fails to consider whether the job is a "functional" manager or executive level position.

(Emphasis in original). Counsel notes on Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and evidence would be forwarded to the AAO within thirty days of the appeal. To date, no subsequent submission has been made by counsel.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

In the present matter, counsel merely asserts that the director's denial of the petition is based solely on the petitioner's staffing levels. Counsel fails to "identify specifically" how the petitioner's current staffing levels satisfy the reasonable needs of the U.S. entity as addressed in section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phimpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Moreover, counsel erroneously asserts that the director did not consider the beneficiary's employment as a functional manager. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The director

properly explained in the decision her basis for concluding that the beneficiary would not be employed as a functional manager. Therefore, the director satisfied this burden.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for this appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is summarily dismissed.