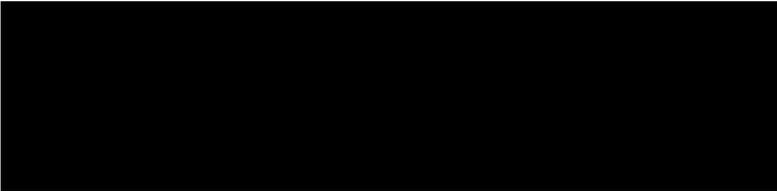


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: EAC 00 104 52021 Office: VERMONT SERVICE CENTER

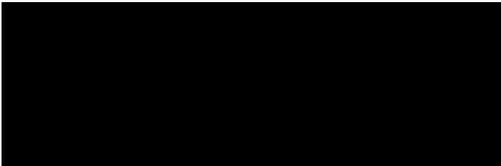
MAR 31 2004

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

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

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DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter was subsequently brought before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider.¹ The motion will be dismissed.

The petitioner is an exporter of goods, equipment, and technology. 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 had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel asserted that the director "misunderstood certain of the essential facts in this matter" and stated that the beneficiary functions in an executive capacity as statutorily defined.

The AAO dismissed the appeal, concluding that the petitioner's organization had not progressed beyond the initial stage of development and that the beneficiary, therefore, would not be employed in a primarily managerial or executive capacity. The petitioner also submitted a motion to reopen and reconsider the director's decision.

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 discretionary authority and his role in planning future projects to further the petitioner's main business objectives. 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 had not yet taken place at the time 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 cites no legal precedent or applicable law that would indicate an error on the part of the director. Counsel suggests that the director failed to consider the petitioner's reasonable needs and stage of development. However, these arguments have since been considered and addressed by the AAO in its dismissal of the petitioner's appeal. Counsel did not introduce any new issues or point out any errors of

¹ The petitioner's motion appears to have been filed in response to the director's decision. However, the regulation at 8 C.F.R. § 103.5(a)(1)(ii) states that the official with jurisdiction is the official who rendered the latest decision in the proceeding. In the instant matter, the AAO made the latest decision when it dismissed the petitioner's appeal. Therefore, the AAO now has jurisdiction over the petitioner's motion, regardless of the date the motion was filed.

law in the motion. 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, that burden has not been met.

ORDER: The motion is dismissed.