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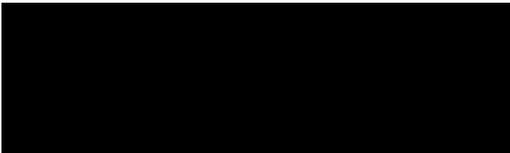


U.S. Citizenship and Immigration Services

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FILE: WAC 02 253 52043 Office: CALIFORNIA SERVICE CENTER Date:

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 nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent Motion to Reopen/Reconsider was granted by the Director, California Service Center. The Director, California Service Center affirmed the previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims to be an importer, wholesaler, and retailer of leather goods. The petitioner claims to be an affiliate of Sany Brimful House, located in Delhi, India. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States in a managerial or executive capacity, namely as its managing director. The director denied the petition stating that the evidence provided by the petitioner did not establish that the beneficiary had been or would continue to be employed in an executive or managerial capacity.

On appeal, the petitioner indicated that he would not be submitting a separate brief but instead submitted evidence in support of the appeal. The petitioner resubmitted copies of four Approval Notices, Forms I-797A, that indicated the beneficiary's stay had been extended from August 1996 through August 2002. The petitioner states that the beneficiary's status has been extended four times without question, and that the circumstances of the intracompany transfer remain the same.

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

Summary dismissal. 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.

As the petitioner has failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal, the appeal will be summarily dismissed.

Notwithstanding the summary dismissal, beyond the decision of the director, it is noted that the beneficiary is ineligible for the classification sought and that the previous four petitions were approved by the director in gross error. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2). The petition includes evidence, including an IRS Form 1040 with Schedule C, that demonstrates that the beneficiary is doing business as a sole proprietorship. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). The beneficiary has effectively been approved previously as a self-petitioning alien. As in the present matter, if the petitioner is actually the individual beneficiary doing business as a sole proprietorship, with no authorized branch office of the foreign employer or separate legal entity in the United States, there is no U.S. entity to employ the beneficiary and therefore no qualifying organization.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.