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FILE: EAC 00 277 52703 Office: VERMONT SERVICE CENTER Date:

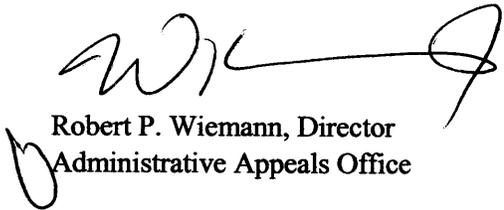
IN RE: Petitioner:
Beneficiary:

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

DISCUSSION: The Director, Vermont 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 an import and export business that 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 managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. 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. The AAO also noted, beyond the decision of the director, that the petitioner submitted conflicting information regarding its ownership and therefore failed to establish that it has a qualifying relationship with a foreign entity.

On motion, counsel asks the AAO to consider the stock that the foreign entity plans to purchase and money it plans to invest into the U.S. petitioner if the petition is granted. The petitioner also projects that upon granting the petition additional employees will be hired.

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's motion is primarily based on events that the petitioner claims will take place in the future, but which have not yet take place. 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 have not materialized is irrelevant in the instant proceeding.

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 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. 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, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.