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U.S. Department of Homeland Security  
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Washington, DC 20529

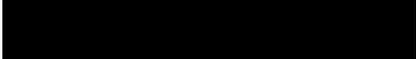


U.S. Citizenship  
and Immigration  
Services



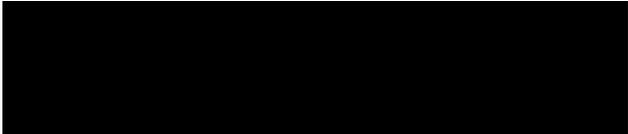
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FILE: SRC 01 084 56433 Office: TEXAS SERVICE CENTER Date: **OCT 01 2004**

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.

*[Handwritten signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its vice president/general manager 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 Florida. It states that it is a subsidiary of Camilio Restrep & Co., located in Colombia. The beneficiary was initially granted a one-year period of stay to assist in the opening of a new office in the United States. The petitioner then sought to extend the beneficiary's stay for an additional two years.

In a decision dated June 1, 2001 the director denied the petition, concluding that the petitioner failed to determine that the beneficiary has been or would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. On February 28, 2003 the AAO dismissed the appeal affirming the director's conclusion. The AAO noted that a significant portion of the beneficiary's time would be spent overseeing the sale of merchandise and concluded that this could not be deemed managerial or executive.

On motion, counsel admits that based on the record as constituted at the time of the director's and AAO's respective decisions, the petition was properly denied and the subsequent appeal was properly dismissed. However, counsel asserts that the petitioner had ineffective assistance of counsel. Counsel further explains that the individual who assisted the petitioner was not an accredited attorney and did not properly advise the petitioner in regard to filing the petition and supporting documentation.

Although counsel notes that the petitioner was not assisted by an attorney but by an agent, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. See 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. Cf. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). In the instant case, all pertinent submissions were signed by an authorized representative of the petitioner, not by the unaccredited individual claimed to have assisted the petitioner in completing the petition. As such, the AAO can only assume that either the petitioner's authorized representative or the beneficiary himself, in his capacity as vice president and general manager, reviewed the documentation prior to its submission.

Furthermore, 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, the evidence submitted in support of the motion consists primarily of orders, invoices, and shipping documents, all of which are dated sometime during the year 2003. However, the petition was filed in 2001. It is noted that eligibility must be established at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, events that materialized after the petition was filed are irrelevant in the instant proceeding.

Although the petitioner specifically filed a motion to reopen, the AAO will accommodate the petitioner by also considering this matter as a motion to reconsider. 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 admits that there was no 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.