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U.S. Citizenship
and Immigration
Services



FILE: EAC 02 132 54192 Office: VERMONT SERVICE CENTER Date: **OCT 25 2004**

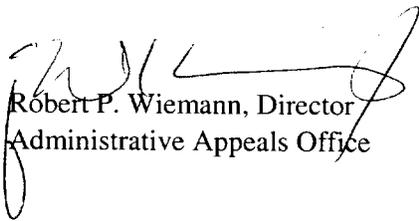
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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

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prevent identity related
invasion of personal privacy

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DISCUSSION: The Director, Vermont 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 states that it is engaged in the manufacturing and distribution of industrial computers. It seeks to employ the beneficiary temporarily in the United States as its procurement specialist, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge capacity. Specifically, the director noted that (1) the beneficiary's job duties as described by the petitioner do not warrant the expertise of someone possessing truly specialized knowledge; (2) the petitioner has not demonstrated that the procedures in which the beneficiary is required to be certified are significantly different from the methods generally used in any other computer manufacturing company, such that an understanding of such procedures would qualify as specialized knowledge; (3) the petitioner has not documented how the beneficiary's knowledge of the petitioner's processes and procedures are substantially different from, or advanced in relation to, any individual similarly employed; and (4) the petitioner has not demonstrated that the beneficiary's knowledge would be difficult to impart to another individual without significant economic inconvenience to the U.S. or foreign entity, or that the knowledge is not generally known.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B Notice of Appeal, counsel for the petitioner simply asserts: "we are submitting additional evidence and further explanation demonstrating the unique knowledge and abilities of the beneficiary." Counsel also submitted the following items on appeal:

1. A letter from the petitioner offering further explanation of the beneficiary's knowledge and experience;
2. Samples of OEM/ODM purchase orders from the petitioner's clients;
3. The beneficiary's certificates of completion for various training courses;
4. The petitioner's OEM/ODM workflow charts; and
5. The petitioner's company brochures.

The regulations 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."

Neither counsel nor the petitioner has identified an erroneous conclusion of law or statement of fact in the director's decision as a basis for the appeal. Further, in his request for further evidence dated April 10, 2002, the director specifically noted that the record at the time was not persuasive in demonstrating that the beneficiary truly possesses specialized knowledge or that she has been and will be employed in a truly specialized knowledge capacity, and requested further documentation to substantiate those aspects of the petitioner's claim. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have

submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in the director's decision, the regulations mandate the summary dismissal of the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.