

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W. Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Identify...
event clearly unwarranted
reason of national security

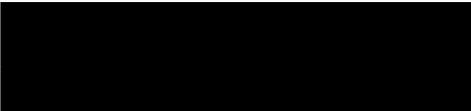
7/19/05



D7

FILE: SRC 04 079 50235 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



AUG 19 2005

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: SELF-REPRESENTED

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, Texas 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 an importer, distributor, and wholesaler of retail products. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its director of operations. The director denied the petition based on the conclusion that the petitioner failed to establish that (1) the beneficiary has been and will continue to be employed in a managerial or executive capacity; or that (2) the petitioner had been doing business for the previous year as required by the regulations.

On appeal, the petitioner indicated on Form I-290B that it would submit a brief and/or additional evidence to address the director's denial within 30 days. Although the petitioner submitted a brief statement on the Form I-290B, it failed to adequately address the director's conclusions. In this brief statement, the petitioner states that the beneficiary, as a manager, also carries out sales duties and that this fact was not understood by the director in her evaluation. The petitioner continues by restating the definitions of managerial and executive capacity and contends that the director's decision in this matter was unjust.

The petitioner's general objections on the Form I-290B, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On the Notice of Appeal received on May 17, 2004, the petitioner clearly indicates that it would send a brief with the necessary evidence [to the AAO] within thirty days. According to 8 C.F.R. § 103.3(a)(2)(i), the petitioner "shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision," which in the case at hand would be no later than Wednesday, June 16, 2004. While the petitioner may request that it be granted additional time to submit an appeal, no such request was made in this case. *See* 8 C.F.R. § 103.3(a)(2)(vii). Even if additional time to submit a brief in support of the appeal had been requested and approved, to date there is no indication or evidence that the petitioner ever submitted a brief and/or evidence in support of the appeal with the Service or with the AAO.¹ As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, and erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(1)(v).

¹ On June 21, 2005, the AAO sent a fax to the petitioner. The fax advised the petitioner that no evidence or brief had ever been received in this matter, and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, the AAO has received no response from counsel or the petitioner.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Contrary to the petitioner's assertions, it does not appear that the beneficiary has met the qualifications for working in capacity that is primarily managerial and/or executive. Rather, the record shows a number of deficiencies, including the fact that the beneficiary performs the sales functions of the company and the petitioner's failure to submit any evidence establishing that it employs dedicated sales persons to relieve the beneficiary from this non-qualifying task. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

Furthermore, the petitioner entirely disregarded the director's second basis for the denial, where she noted that there was insufficient evidence to demonstrate that the petitioner had been doing business for the previous year as required by the regulations. The petitioner's general comments fail to acknowledge or address the director's specific reasons for the denial. Accordingly, the appeal will be summarily dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.