

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



U.S. Citizenship  
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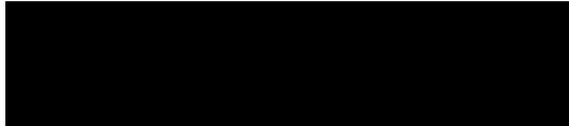
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FILE: EAC 01 120 51196 Office: VERMONT SERVICE CENTER Date: **AUG 30 2005**

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:

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

[www.uscis.gov](http://www.uscis.gov)

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner claims to be an import and export business engaged in the wholesale and retail of fine and applied art. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its director associate. The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, the petitioner claimed that the evidence submitted was sufficient to establish that the beneficiary had been and would be employed in a managerial or executive capacity. The petitioner further contends that the facts and circumstances surrounding the initial petition remain the same and should have been reviewed and applied in rendering the decision in the instant petition. The petitioner also asserts that the analysis applied in the instant case did not take into account what had been demonstrated in the initial application. The petitioner does not submit any evidence on motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states, 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.

The regulation at 8 C.F.R. § 103.5(a)(3) states, 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 Service 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. However, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Eligibility for CIS benefits and services must be determined on a case-by-case basis.

In the instant case, the petitioner's motion does not contain any new facts and is unsupported by any new evidence or pertinent precedent decisions to establish that the prior decisions were based on an

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incorrect application of law or CIS policy. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion is dismissed.