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FEB 15 2008



FILE: SRC-03-226-50085 Office: TEXAS SERVICE CENTER Date:

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

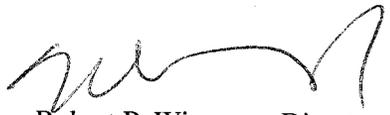
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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
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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 a manufacturer of high precision components and provides assembly for industries such as automotive, agriculture, marine, electrical, machine tools, and specialty equipment. It seeks to employ the beneficiary temporarily in the United States as a Machining 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 did not establish that the beneficiary will be employed in a capacity that involves specialized knowledge.

In a brief submitted with the petitioner's Form I-290B appeal, the petitioner describes its recent business operations and the beneficiary's experience with the company. The petitioner provides a document titled "Additional Evidence" that was previously submitted in response to the director's Notice of Intent to Deny under the title "Employment Certificate." The petitioner does not address the director's denial or assert that the director's decision was based on any erroneous conclusion of law or statement of fact.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The AAO notes that, in the appellate brief, the petitioner states that the beneficiary participated in the design of proprietary computer numerical control (CNC) equipment that is to be installed and operated at the petitioner's manufacturing center in the United States. This information was not provided to the director, although the director's Notice of Intent to Deny specifically instructed the petitioner to "[s]ubmit evidence that the [beneficiary's] specialized knowledge is distinguished by some unusual qualification and not generally known by practitioner's in the [beneficiary's] industry."

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 beneficiary's participation in the design of its CNC equipment to be considered, it should have submitted an explanation and documentation of this fact in response to the director's Notice of Intent to Deny. *Id.*

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.