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U.S. Citizenship
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FILE: WAC-04-031-50288 Office: CALIFORNIA SERVICE CENTER Date:

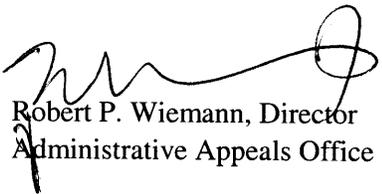
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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, California 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 and distributor of handicrafts. It seeks to employ the beneficiary temporarily in the United States as a Marketing Director, 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: (1) the beneficiary will be employed in a managerial or executive capacity in the United States; and (2) the beneficiary was employed in a primarily managerial or executive capacity abroad.

On Form I-290B, counsel for the petitioner stated the following:

The WAC erred in determining that the beneficiary will not be employed in a managerial or executive capacity [and] therefore was not eligible for an extension on L-1 status. The WAC misinterprets the category "manager of a function" of a company. The WAC's determination is an error in law. Furthermore, The WAC erroneously determines that the beneficiary's duties and responsibilities in the capacity of Marketing Director did not qualify as a "manager of a function." Therefore, the WAC's decision should be reversed and the petitioner's request for an extension of [the] beneficiary's L-1 status should be granted. Furthermore, The WAC erred in determining that the beneficiary was not employed in an executive or managerial capacity abroad, whereas this issue had been previously adjudicated and WAS determined when the initial petition was filed that the beneficiary's position abroad was indeed in an executive or managerial capacity.

While counsel asserts that the director's overall conclusions are erroneous, counsel does not address the director's actual analysis in the denial. Counsel fails to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. Further, while counsel indicated on Form I-290B she would be submitting a brief and/or additional evidence within 30 days of filing the appeal, as of the date of this decision, the AAO has received no further documentation or correspondence from counsel or the petitioner.

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.

Counsel references the fact that CIS previously approved an L-1 petition by the petitioner on behalf of the beneficiary. Counsel suggests that, as the director previously determined that the beneficiary was employed abroad in a primarily managerial or executive capacity, that issue should not be readjudicated in this proceeding. The AAO notes that the director 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).

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.