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JAN 27 2005

FILE: EAC 98 089 52731 Office: VERMONT 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

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently filed a timely appeal. On May 4, 1999, the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on a motion to reopen the AAO's decision. The motion to reopen will not be granted.

The petitioner filed the nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of New York that operates as an import and export company. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Fuzhou, Fujian, China. The petitioner now seeks to extend the beneficiary's stay for two years.

The director denied the petition concluding that the petitioner had failed to demonstrate that: (1) the beneficiary had been employed in a primarily managerial or executive capacity; (2) the United States entity had grown to a point where it would support employment of the beneficiary as a manager or an executive; and (3) the foreign corporation was doing business during the beneficiary's absence. The AAO affirmed the decision of the director and dismissed the appeal.

The petitioner filed the instant motion to reopen on June 1, 1999. The petitioner provides a brief statement of the beneficiary's job duties in the United States and challenges the findings by the director and the AAO that the beneficiary's job description is a restatement of the regulatory requirements for managerial and executive capacity. The petitioner also submits evidence previously requested by the director that the foreign corporation is doing business during the beneficiary's assignment in the United States. In addition, the petitioner submits bills of lading, customs forms, invoices, and packing lists as evidence that the United States organization has grown to a point where it can support the beneficiary in a qualifying capacity.

The regulation at 8 C.F.R. § 103.5(a)(2) provides:

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.

In the instant matter, the petitioner submits evidence that was previously addressed and requested for by the director. On February 27, 1997, the director issued a lengthy notice of intent to deny explaining the above-stated issues and requesting documentation relating to the beneficiary's employment capacity, including the beneficiary's specific responsibilities, and evidence pertaining to the business operations of both the foreign and United States entities. The petitioner submits evidence with the instant motion regarding the activity of the foreign business and the petitioner's ability to support the beneficiary in a qualifying capacity. Specifically, the petitioner submitted the previously requested sales contracts, packing lists, and invoices for the foreign company, and a description of the beneficiary's tasks while employed in the United States. 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 motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) (determining that evidence submitted for the first time on appeal will not be considered); *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 and evidence 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 motion.

Moreover, the declarations that have been provided by the petitioner on motion are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The petitioner also claims on appeal that its former agent did not submit documentary evidence of the petitioner's business operations. There is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

As the motion is not supported by new facts and affidavits, the motion will not be granted.

ORDER: The motion is dismissed.