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U.S. Citizenship
and Immigration
Services

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File: SRC-03-173-54310 Office: TEXAS SERVICE CENTER Date: JUL 07 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)

IN 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 filed this nonimmigrant petition seeking to extend the employment of its President and General Manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized in the State of Texas that operates as a retailer of sunglasses and related products. The petitioner claims that it is the subsidiary of Channal Burger & Fried Chicken, located in Karachi, Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On the Form I-290B appeal, counsel asserts:

The Center Director erred in failing to approve the L-1A Petition for [the] following reasons:

1. [The beneficiary] will be employed at an executive level at [the petitioner]
2. For Such other reasons as shall be set forth in the evidence submitted.

Counsel submits a brief in which he discusses the beneficiary's position and asserts that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel fails to address the director's grounds for denial, or specifically identify an erroneous conclusion of law or a statement of fact in this proceeding.

The AAO notes that counsel's appellate brief largely repeats information, often verbatim, previously provided in the June 4, 2003 letter from the petitioner submitted with the petition. Such recitation of facts already entered into the record does not constitute "identify[ing] specifically an erroneous conclusion of law or a statement of fact." 8 C.F.R. § 103.3(a)(1)(v). Counsel states that the petitioner now employs five individuals, and the petitioner provides its IRS Form 941, Employer's Quarterly Federal Tax Return, and its Texas Form C-3, Employer's Quarterly Report, for the fourth quarter of 2003 as evidence of this fact. Yet, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The fact that the petitioner hired new employees after the date of filing is not probative of the petitioner's eligibility as of the filing date. Further, counsel mentions that the beneficiary "will supervise employees who run day-to-day operations of the retail gas stations." However, prior to this appeal, the petitioner provided no indication that it operates or intends to operate gas stations. In fact, in response to the director's October 4, 2003 request for photographs of the petitioner's business, the petitioner provided photographs of sunglasses retail operations, including a small, one-room shop and a shopping mall vending stall. 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).

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.

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 counsel 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.