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



U.S. Citizenship  
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Services

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[REDACTED]

D7

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2005

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

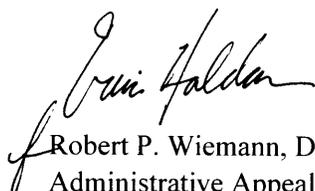
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[REDACTED]

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 operates as a clothing distributor. It seeks to employ the beneficiary temporarily in the United States as its Chief Executive Officer. The director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity.

On the Form I-290B appeal, counsel for the petitioner explains that the petitioner wishes to have the petition reconsidered "based on **new evidence.**" (Emphasis in original). The petition was filed on February 2, 2004. Counsel states that, after responding to the director's second request for evidence, the petitioner expanded its operations by opening a second showroom and hiring three additional workers. Counsel provides additional evidence to support these assertions, including a new organizational chart. Counsel claims that the "new Organizational Chart clearly reflects that [the beneficiary] is employed in the United States in a **managerial capacity . . . .**" (Emphasis in original). Counsel does not discuss the director's analysis or claim that the director's decision was erroneous based on the petitioner's status as of the filing date. Counsel fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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 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 expanded its operations and hired new employees after the date of filing is not probative of whether the petitioner was eligible as of the filing date. Thus, counsel's assertions and the new evidence submitted on appeal do not show that the beneficiary would be employed in a primarily managerial or executive capacity at the time the petition was filed.

It is noted that, if the petitioner wishes to have the new evidence considered, the regulations permit it to file a new 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 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.