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FILE: SRC 04 042 51347 Office: TEXAS SERVICE CENTER Date: JUN 01 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)

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, 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 distributor of electronic locking systems and safes for the hotel industry. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its senior/Mexico operations accountant, 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 failed to establish that the beneficiary would be employed in a specialized knowledge capacity. Specifically, the director found that the petitioner has not established that the position being offered to the beneficiary requires the services of an individual possessing specialized knowledge, nor has the petitioner shown that the beneficiary possesses specialized knowledge. The director further noted that the beneficiary's job duties as outlined by the petitioner do not appear to be significantly different from those of any other accountant employed by the petitioner, nor are they different from the duties performed by other accountants in any industries. The director also found that although the petitioner indicated that the position requires an individual who has an in-depth knowledge of the petitioner's processes, the petitioner has not demonstrated that those processes are significantly different from the methods generally used in any manufacturing or distribution company, nor has the petitioner established that an understanding of those accounting methods within the company is indicative of advanced knowledge. The director concluded that the beneficiary's knowledge is essentially common accounting knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B Notice of Appeal, counsel for the petitioner simply asserts that the director's decision was in error because the record establishes that the beneficiary possesses specialized knowledge required for L-1 classification. Counsel further asserts that since the Citizenship and Immigration Services (CIS) recognized the beneficiary's eligibility for L-1B classification based on specialized knowledge in approving the initial L-1 petition, the CIS now errs in denying the present L-1 petition extension solely on the ground that the beneficiary lacks specialized knowledge. Counsel did not submit a separate brief or evidence.

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. On appeal, counsel generally claims that the director's decision is in error as the petitioner is eligible for the benefit sought based on the beneficiary's duties and experience. Counsel's general objection to the denial of the petition, without specifically identifying any errors on the part of the director, is simply insufficient to overcome the well-founded conclusions the director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503,

506 (BIA 1980). 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).

Counsel also claims that the director's decision denying an extension is in error because the initial L-1 petition was approved. The AAO notes that prior approvals do not preclude the CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The director's decision does not indicate whether she reviewed the prior approval of the petitioner's initial petition. If the initial petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO 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). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The regulations at 8 C.F.R. § 103.3(a)(1)(v) states, 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 the director's decision, the regulations mandate the summary dismissal of the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. See section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.