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

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U.S. Citizenship
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Services

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JUN 08 2005

[redacted]

File: EAC 03 035 52694 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
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)

IN 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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The U.S. petitioner, a corporation organized in the State of New Jersey, is engaged in the import and sale of rugs. It seeks to employ the beneficiary as its general manager. 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 appeal, counsel for the petitioner indicated on Form I-290B that it would submit a brief and/or additional evidence to address the director's denial within 30 days. Although counsel submitted a brief statement on the Form I-290B, it failed to adequately address the director's conclusions. In this brief statement, counsel states:

> [CIS] disregarded the evidence submitted by beneficiary and petitioner with regard to beneficiary's executive capacity.
>
> [CIS] further totally disregarded the evidence submitted by the petitioner regarding the job duties of the employees currently working for the petitioner.
>
> We respectfully submit that [CIS] abused its discretion to consider the evidence submitted in support of the petition. Therefore, the denial was not justifiable and should be reversed.

Counsel's general objections on the Form I-290B, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. 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).

On the Notice of Appeal received on March 31, 2003, counsel for the petitioner clearly indicates that it would send a brief with the necessary evidence [to the AAO] within thirty days. According to 8 C.F.R. § 103.3(a)(2)(i), the petitioner "shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision," which in the case at hand would be no later than Friday, April 2, 2003. While the petitioner may request that it be granted additional time to submit an appeal, no such request was made in this case. *See* 8 C.F.R. § 103.3(a)(2)(vii). Even if additional time to submit a brief in support of the appeal had been requested and approved, to date there is no indication or evidence that the petitioner ever submitted a brief and/or evidence in support of the appeal with the Service or with the AAO.[1] As stated above, absent a clear statement, brief and/or evidence to

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[1] In response to an inquiry by the AAO which sought to ascertain whether a brief had been previously submitted in this matter, counsel presents a faxed statement dated May 9, 2005. Counsel asserts that this recent statement is the brief in support of the appeal. Counsel, however, ignores the fact that the regulations do not allow a petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. Since counsel did not submit the brief and/or additional evidence within the period indicated on the Form I-290B, this newly submitted evidence will not be considered.

the contrary, the petitioner does not identify, specifically, and erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(1)(v).

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.

The filing by an attorney of an appeal that is summarily dismissed under this section may constitute frivolous behavior as defined in 8 C.F.R. §292.3(a)(15).

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.