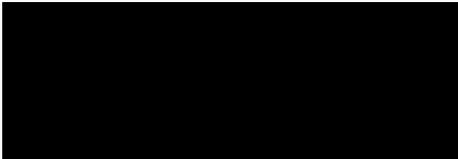


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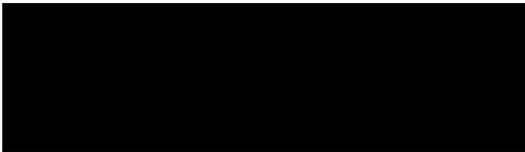
File: SRC-02-046-53295 Office: TEXAS SERVICE CENTER Date: JUN 13 2005

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.


f Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to deny the petition. The matter is now before the AAO on motion to reconsider. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its Executive 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 corporation organized in the State of Florida that operates as an importer and exporter of computers, office supplies, and related merchandise. The petitioner claims that it is the branch of [REDACTED], located in Caracas, Venezuela. The beneficiary was initially approved for L-1A status for one year 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. The AAO affirmed this determination on appeal.

On motion, counsel for the petitioner submits a brief and additional evidence to address the director's denial and the findings of the AAO. Counsel asserts that the AAO erroneously dismissed the appeal based on a finding that the beneficiary will not manage other professionals or managers.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In counsel's brief, he quotes the portion of the AAO's decision in which the AAO summarizes the director's grounds for denial. Specifically, the AAO stated the following:

The director determined that the beneficiary is not performing in a managerial or executive capacity since the beneficiary is not managing other professionals or managers. The director also determined that since the beneficiary is the only employee, it appears that he would have to engage in the day-to-day business activities of the company.

Counsel offers assertions to overcome these stated grounds for denial, including reference to an unpublished AAO decision to stand for the proposition that a sole employee can qualify as an L-1A executive or manager. However, counsel fails to discuss the AAO's grounds for dismissing the appeal. While the AAO provided the director's grounds for denial, that portion of the AAO's decision does not represent the AAO's analysis or determination. In subsequent portions of the decision, the AAO correctly explained the appropriate use of a petitioner's staff size in adjudicating a petition for L-1A status. The AAO provided that section 101(a)(44)(C) of

the Act requires Citizenship and Immigration Services (CIS) to assess the reasonable needs of a petitioner, in light of the overall purpose and stage of development of the organization, if staffing levels are used as a factor in determining whether the beneficiary will act in a managerial or executive capacity. The AAO examined the petitioner's reasonable needs, and concluded that the petitioner failed to establish that its needs can be met with the beneficiary functioning in a primarily managerial or executive capacity. In fact, in the prior appeal, the petitioner's previous counsel raised the same assertion that counsel now makes on motion. The AAO correctly addressed the issue of the appropriate consideration of the petitioner's staffing, and thus counsel's assertions on motion do not "establish that the [AAO's] decision was based on an incorrect application of law or Service policy." 8 C.F.R. § 103.5(a)(2).

The AAO further found that the petitioner failed to provide sufficient detail regarding the beneficiary's duties, such to show that he will be managing an essential function rather than performing it himself. Counsel failed to address this finding.

The present motion is limited to addressing issues raised by the director. Yet, the AAO's dismissal of the petitioner's appeal was the last decision in this proceeding. The petitioner must establish that the AAO's decision "was based on an incorrect application of law or Service policy" in order for the present motion to be granted. 8 C.F.R. § 103.5(a)(2). The petitioner has failed to meet this burden.

It is further noted that counsel cited a single unpublished AAO decision in support of his assertions. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Thus, counsel has neither stated sufficient reasons for reconsideration nor supported his assertions with pertinent precedent decisions, such to establish that the AAO's decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reconsider will not be granted.

It is further noted that the petitioner failed to properly file the present motion within the permitted 30-day period. The petitioner mailed the motion to the AAO within 30 days of the AAO's prior decision, yet the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) provides that the motion should have been filed with the Citizenship and Immigration Services (CIS) Texas Service Center. The motion was not received by the Texas Service Center until May 17, 2004, approximately two weeks after the due date.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.