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FILE: WAC 04 082 53395 Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005

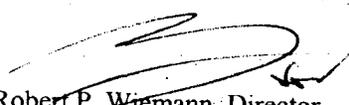
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 is a newspaper publisher and distributor. It seeks to extend the beneficiary's period of stay as a nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary possessed specialized knowledge of the petitioner's practices and procedures as defined by 8 C.F.R. § 214.2(l)(1)(ii)(D).

On appeal, counsel for the petitioner indicated on Form I-290B that he would submit a brief and/or additional evidence to address the director's denial within thirty days. Although counsel submitted an explanatory statement on Form I-290B, he failed to address the director's conclusions. In this brief statement, counsel stated that the petitioner required an additional thirty days to translate approximately seventy pages of documents received from the parent company in Korea. Counsel's general statement on Form I-290B did not address or specifically identify any errors on the part of the director, and is 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On the Notice of Appeal received on April 2, 2004, counsel for the petitioner clearly indicated 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 Wednesday April 7, 2004. Although the petitioner requested additional time to submit its arguments on appeal, there was no indication or evidence that the petitioner submitted a brief and/or evidence in support of the appeal with the Service or with the AAO.

On September 27, 2005, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had ever been received in this matter, and requested that counsel submit a copy of the *originally submitted* brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. On October 3, 2005, the AAO received a fax from counsel's office. Included in the fax was a brief dated October 3, 2005, accompanied by supporting documentation and a translation certification signed by [REDACTED] which was also dated October 3, 2005.¹ Counsel gives no indication that this brief had been previously filed with the AAO. Furthermore, counsel submits no copy of a dated cover letter, previously dated brief, or other evidence, such as a mailing receipt, to prove that this brief was in fact filed with the AAO within 30 days of the filing of the Form I-290B. It appears, therefore, that this brief was prepared and submitted for the first time in response to the AAO's facsimile of September 27, 2005. The regulations do not allow an applicant or petitioner an open-ended or

¹ An additional copy of this documentation was received on October 4, 2005 via Express Mail.

indefinite period in which to supplement an appeal once it has been filed. As a result, counsel's brief will not be considered.

The petitioner, a newspaper publisher and distributor, sought to extend the employment of the beneficiary in the United States as the manager of its advertisement planning and business department. The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish evidence in support of its contentions. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden. The director denial provided a detailed and thorough evaluation of the beneficiary's position in accordance with the definition of specialized knowledge contained in the regulations at 8 C.F.R. § 214.2(I)(1)(ii)(D).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of a manager of advertising or business at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish supporting evidence in support of its contentions. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden.

As stated above, absent a timely filed clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, an 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.

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.