



U.S. Citizenship
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FILE: WAC 04 160 50103 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: SELF-REPRESENTED

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 chandelier designer and importer. It seeks to employ the beneficiary 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 would be employed in a primarily managerial or executive capacity.

On appeal, 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.¹ Although the petitioner submitted an explanatory statement on Form I-290B, it failed to address the director's conclusions. In this brief statement, the petitioner stated that the director's decision was inappropriate because a request for evidence (RFE) had not been sent in this matter. The petitioner'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 June 22, 2004, the petitioner clearly indicated that it would send a "full appeal" [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 June 23, 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 October 4, 2005, the AAO sent a fax to the petitioner. The fax advised the petitioner 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 6, 2005, the AAO received a fax from the petitioner. Included in the fax was a brief with a handwritten date of July 21, 2004 accompanied by a cover sheet indicating that this brief had originally been filed with the AAO on or about June 30, 2004. The petitioner provides no evidence, other than its statement on the cover sheet, that this brief had been previously filed with the AAO. Going

¹ It is noted that the petition and the appeal were prepared by an immigration service provider. The petition is not accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, nor has the immigration service provider established that it is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. See 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

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)).

The petitioner 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. Most importantly, the fact that the brief is dated July 21, 2004 directly contradicts the petitioner's claim that the brief was originally filed with the AAO on or about June 30, 2004. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It appears, therefore, that this brief was prepared and submitted for the first time in response to the AAO's facsimile of October 4, 2005. The regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. As a result, the petitioner's brief will not be considered.

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.