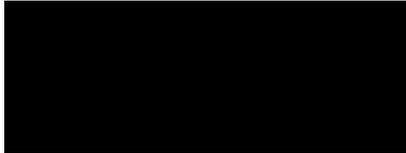




U.S. Citizenship
and Immigration
Services

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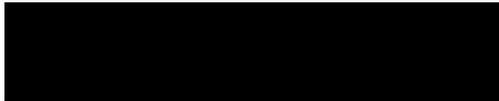
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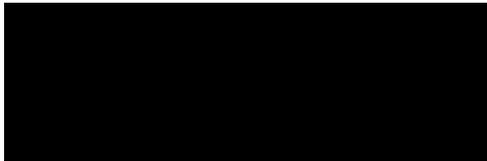
FILE: EAC 04 047 51043 Office: VERMONT SERVICE CENTER Date: **OCT 27 2005**

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, Vermont 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 operates a retail store. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager, 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 did not establish that the beneficiary would be employed in a managerial or executive capacity.

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 asserts:

Examining officer wrongly denied renewal of L-1A status despite clear proof that beneficiary was head of a U.S. company with approximately \$1 million annual gross revenues and six employees subordinate to the beneficiary. Decision is wrong on facts and law and reflects a wrongful prejudice against L-1A executives in small businesses.

Counsel indicated on Form I-290B that he would submit a brief or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on September 30, 2005 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel replied on October 3, 2005, indicating that he did not file a brief or evidence in support of this appeal. Accordingly, the record is now complete.

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. Counsel's general objections to the denial of the petition, 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. 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).

Contrary to counsel's assertions, Citizenship and Immigration Services (CIS) is not required to deem the beneficiary a manager or executive for immigration purposes simply because he is the "head of a U.S. company with approximately \$1 million annual gross revenues" and has six subordinates. Although counsel

asserts that the director placed undue emphasis on the size of the petitioning organization, upon review, the director's decision to deny the petition was based primarily on the petitioner's failure to provide a detailed description of the beneficiary's job duties as required by 8 C.F.R. § 214.2(l)(3)(ii). Further, the record shows that the director clearly considered the reasonable needs of the organization when reviewing the petitioner's described staffing structure and determining whether the beneficiary's employment is in a managerial or executive capacity. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Counsel's brief statement on the Form I-290B fails to acknowledge, much less resolve the deficiencies discussed in the denial.

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.