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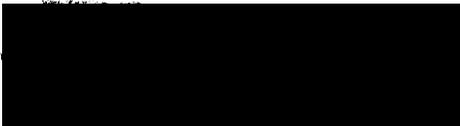
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FILE: EAC 04 014 52272 Office: VERMONT SERVICE CENTER Date: SEP 30 2005

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:



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 operates a retail outlet which provides shipping and related communication services. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its executive 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 based on the conclusion that the petitioner failed to establish that the beneficiary will be employed in a 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 the petitioner submitted a brief statement on the Form I-290B, it failed to adequately address the director's conclusions. In this brief statement, counsel for the petitioner states that "the denial of the petition was an error of law and abuse of discretion."

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 June 9, 2004, 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 Wednesday, June 16, 2004. 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, 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 prior to August 9, 2005.

On August 9, 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 August 15, 2005, the AAO received a fax from counsel's office. On the cover sheet, counsel states "[h]ere is Brief in support of appeal within 5 business days." The brief is undated and counsel gives no indication that this brief had been previously filed with the AAO. Furthermore, counsel submits no copy of a dated cover letter 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 August 9, 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, counsel'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.