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U.S. Citizenship  
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AUG 03 2006

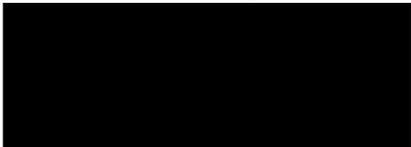
FILE: LIN 04 167 53197 Office: NEBRASKA SERVICE CENTER Date:

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:



PUBLIC COPY

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 provides specialty services including full-scale project management and realization, and mediation for project contracts. 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, counsel for the petitioner indicates 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 fails to address the director's conclusions. In this brief statement, counsel states:

BENEFICIARY HAS PROVIDED EVIDENCE AND CAN PROVIDE ADDITIONAL EVIDENCE TO REFLECT THAT HE MEETS THE CRITERION ENUMERATED FOR AN EXECUTIVE OR MANAGERIAL POSITION, THUS QUALIFYING HIM FOR CLASSIFICATION UNDER SECTION 101(a)(15)(L). FURTHER, ALTHOUGH THE FACT THAT BENEFICIARY OVERSEES A SMALL BUSINESS DOES NOT NECESSARILY ESTABLISH ELIGIBILITY FOR CLASSIFICATION AS AN INTRACOMPANY TRANSFEREE IN A MANAGERIAL OR EXECUTIVE CAPACITY WITHIN THE MEANING OF SECTION 101(a)(44)(A) AND (B) OF THE ACT, IN THIS CASE THE EVIDENCE, WHEN VIEWED IN ITS TOTALITY, DOES ESTABLISH BENEFICIARY'S ELIGIBILITY FOR AN INTRACOMPANY TRANSFEREE. THEREFORE, BENEFICIARY SHOULD BE GRANTED HIS APPEAL.

Counsel's general statement on Form I-290B does 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 December 13, 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 Monday, December 13, 2004. Although the petitioner requested additional time to submit its arguments on appeal, to date 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.

On June 27, 2006, 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 July 3, 2006, the AAO received a fax from counsel's office requesting additional time to locate its file and forward the brief to the AAO. Specifically, counsel requested an additional five business days, or an extension until July 12, 2006. On July 14, 2006, the AAO received a second fax from counsel which included a brief dated December 28, 2004.

Counsel's brief includes references to supporting evidence including the petitioner's Forms 1099-MISC, evidencing wages paid to independent contractors for the years 2004 and 2005, as well as the beneficiary's unsigned and undated individual income tax returns for the years 2004 and 2005. These documents are discussed on page four of the appeal brief and attached to the brief as Exhibits "D" and "E." It appears that, upon review of the evidence submitted, counsel has submitted a new brief that was back-dated to December 28, 2004 in an attempt to satisfy the AAO requirement for a timely filed brief in support of the appeal. 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. Moreover, the fact that the beneficiary's individual income tax return and the petitioner's Forms 1099-MISC for the year 2005 are referred to in a brief dated December 28, 2004 and attached thereto suggests that this brief was prepared and submitted for the first time in response to the AAO's facsimile of June 27, 2006.<sup>1</sup> 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

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<sup>1</sup> Counsel makes no attempt to explain how these documents, which pertain to the 2005 tax year, could feasibly be included in a brief prepared in December of 2004. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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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.