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FILE: SRC 04 217 51776 Office: TEXAS SERVICE CENTER Date: **APR 07 2006**

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:

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, Texas 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 Florida corporation operating as a marketing, entertainment and public relations agency. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its financial 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 has not established that the beneficiary would be employed in a primarily managerial or executive capacity in the United States. The director noted that according to the U.S. entity's organizational chart, the beneficiary supervises only an accountant. Although the chart indicates that he also oversees subcontractors, as the director observed, the record contains insufficient information regarding the nature and extent of the subcontractors' relationship with the U.S. entity. The director determined that given the current structure of the company, the beneficiary would have to engage in the day to day operations of the company, and it does not appear that the beneficiary would be supervising a subordinate staff of professional, managerial or supervisory personnel who would relieve him from performing non-qualifying duties. Therefore, the director concluded that based on the totality of the evidence, the beneficiary would not be engaging in primarily executive or managerial duties for the petitioner.

In a letter dated January 27, 2004 submitted with the Form I-290B, Notice of Appeal, the petitioner generally describes the nature of its business and asserts that it would take time and effort to build up the company's operational structure. The petitioner states that the company has been working hard to increase its permanent staff and intends to continue doing so. The petitioner also explains that it has recently hired an operations director and would like to add at least four more employees in the year 2004. Finally, the petitioner requests more time to grow the company.

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. On appeal, the petitioner has not addressed the issues raised in the director's decision, nor has the petitioner specified any errors in law or fact in the director's decision. Instead, the petitioner asserts that it requires more time to grow the business and that it intends to increase its staff in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in the regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by

regulation for an extension. In the instant matter, the record does not show that the petitioner has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Moreover, the regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or statement of fact in this proceeding, the appeal must be summarily dismissed.

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. The petitioner has not met this burden.

**ORDER:** The appeal is summarily dismissed.