



U.S. Citizenship
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Services

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FILE: WAC 04 173 50476 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

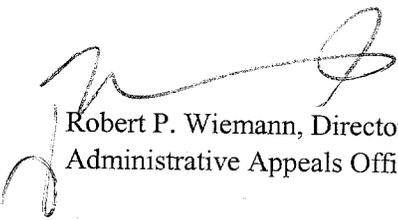
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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 filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California corporation which claims to be engaged in the import, export and wholesale of gifts and accessories. The petitioner claims that it is a subsidiary of [REDACTED] Limited, located in Guangzhou, China. The petitioner has been employed the beneficiary in L-1A status since 1999 and now seeks to extend his status for an additional three-year period.

The director denied the petition concluding that the petitioner had not established: (1) that the beneficiary would be employed in a managerial or executive capacity with the U.S. entity, or (2) that the petitioner maintained a qualifying relationship with its claimed foreign parent company. In his September 9, 2004 decision, the director discussed the evidence submitted in response to his July 15, 2004 notice of intent to deny, and why this evidence was insufficient to overcome the deficiencies and inconsistencies observed in the record.

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 states:

The grounds for appeal are as follows:

The L-1 petition filed on behalf of the Alien [has] been denied in error because the Alien had been and is currently acting in managerial and executive capacity as President of the US Subsidiary. In addition, contrary to USCIS opinion, the US Subsidiary continues to have a qualifying relationship with its parent company abroad in China.

Counsel indicated on Form I-290B that she would forward a brief and/or evidence to the AAO within 30 days. On November 4, 2004, counsel submitted a letter to the AAO indicating: "[I]n lieu of an [AAO] brief, we wish to maintain the assertions contained in our reply to the USCIS' Notice of Intent to Deny."

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).

Furthermore, rather than identifying an erroneous conclusion of law or statement of fact in support of the appeal, the petitioner has opted to rely on its August 10, 2004 response to the director's notice of intent to deny as sufficient evidence of the petitioner's and beneficiary's eligibility. However, a review of the director's decision reveals that he had thoroughly reviewed the evidence submitted in response to the notice of intent to deny and articulated his legally sound reasons for finding the evidence to be insufficient. Counsel fails to acknowledge, much less resolve, the deficiencies discussed in detail by the director. 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)). The petitioner has not submitted evidence on appeal to overcome the director's findings.

Finally, the AAO acknowledges that CIS previously approved previous requests for an extension of L-1A status filed on the beneficiary's behalf. However, each nonimmigrant petition has a separate record of proceeding with a separate burden of proof; each individual petition must stand on its own merits. *See* 8 C.F.R. § 103.8(d). The prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's and beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the prior approval would constitute material and gross error on the part of the director. Due to the lack of required evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals and denying the present extension petition.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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.

ORDER: The appeal is summarily dismissed.