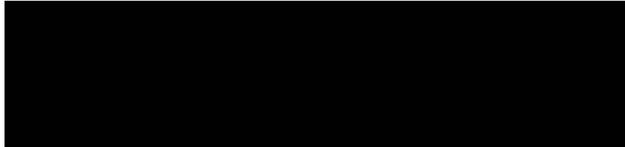


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File: EAC 05 004 51600 Office: VERMONT SERVICE CENTER Date: OCT 23 2006

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)

IN 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa on March 23, 2005. On April 26, 2005, the petitioner filed an appeal, which, due to being untimely, was treated by the director as a motion to reconsider. On June 6, 2005, the director affirmed his prior denial of the petition. The director's decision to affirm his prior decision is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as 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 claims to be engaged in the business of selling cleaning products and to be a subsidiary of [REDACTED] of China.

The director denied the petition on March 23, 2005 concluding that the petitioner failed to establish the existence of a qualifying relationship. The director rendered his decision after reviewing both the petition and the petitioner's response to the Request for Evidence dated November 18, 2004, in which the petitioner was specifically requested to provide documentary evidence establishing a qualifying relationship with the foreign entity.

On April 26, 2005, the petitioner filed an appeal to the director's decision. Since the appeal was untimely, the director treated the appeal as a motion to reconsider. The petitioner stated the following in its Form I-290B:

The qualifying relationship between [the petitioner] and [the foreign entity] could be evidenced by the facts: (i) the Beneficiary incorporated the US company according to the decision of the [foreign entity]; and (ii) the [the foreign entity] owns 100% of the shares of [the petitioner].

The petitioner did not provide any documentary evidence in support of its initial appeal/motion.

On June 6, 2005, the director affirmed his prior denial of the petition. The director determined that "[t]he motion to reconsider was not supported by any documentary evidence to support the relationship."

On July 8, 2005, the petitioner appealed the director's denial of the motion to reconsider to the AAO. In support of this appeal, the petitioner provided a letter and, for the first time, additional evidence addressing its purported qualifying relationship with the foreign entity. This evidence includes translated documents as well as the petitioner's 2004 Form 1120 dated July 5, 2005. The petitioner does not allege that the director's denials of the petition and the motion to reconsider were in error. Rather, the petitioner states that it believes that the "above documents will strongly evidence that there *is* a qualifying relationship between [the petitioner] and [the foreign entity] and request[s] that [Citizenship and Immigration Services] change [its] decision accordingly."

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 both the denial of the petition and the motion to reconsider.

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in the director's denial of the motion to reconsider, the appeal must be summarily dismissed.

While the petitioner attempted to supplement the record on appeal, it failed to provide any additional evidence for the AAO to consider or to identify any errors in this proceeding.

First, as the AAO's scope of review in this matter is limited to the director's denial of a motion to reconsider, additional facts or evidence are irrelevant to these proceedings. As explained in 8 C.F.R. § 103.5(a)(3), consideration of a motion to reconsider is limited to the evidence of record at the time of the initial decision. Consequently, the AAO's review of the director's denial of the motion to reconsider is also limited to the evidence of record at the time the director's decision was made. Absent the petitioner's identification of an erroneous conclusion of law or statement of fact, the appeal must be summarily dismissed and the introduction of additional facts on appeal may be correctly ignored.

Second, the petitioner was put on notice by the director of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). 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)). Consequently, the appeal will be dismissed.

Third, while the petitioner's completed 2004 Form 1120 may not have been available at the time the petition was filed, it is not relevant to these proceedings. 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).

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.