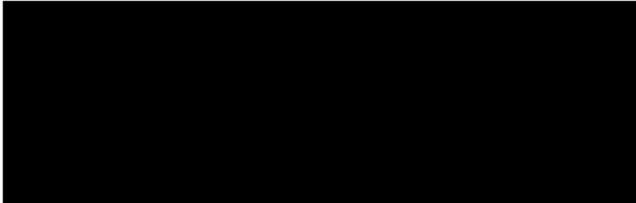




U.S. Citizenship  
and Immigration  
Services

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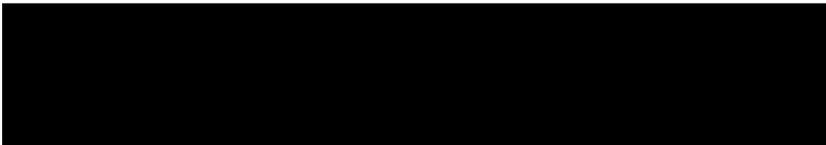
D7

FILE: LIN 02 146 54653 Office: NEBRASKA SERVICE CENTER Date: **AUG 02 2007**

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:



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 nonimmigrant visa petition. The petitioner filed an appeal and a subsequent motion with the Administrative Appeals Office (AAO). Each was ultimately dismissed. The matter presently before the AAO is the petitioner's second motion. The motion will be granted. The AAO's prior decision will be withdrawn in part and affirmed in part.

The petitioner is an Oregon entity seeking to temporarily employ the beneficiary as its vice president. Accordingly, the petitioner endeavors to classify the beneficiary 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 director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity and denied the petition in a decision dated January 22, 2003. The AAO affirmed the director's finding, dismissing the petitioner's appeal and in addition finding that the petitioner failed 1) to provide sufficient evidence of a qualifying relationship and 2) to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The petitioner subsequently filed a motion with the AAO seeking reopening of the case and reconsideration of the AAO's decision dismissing the appeal.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.<sup>1</sup> The regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [CIS] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The AAO dismissed the petitioner's motion concluding that the petitioner failed to submit new evidence or state reasons for reconsideration supported by pertinent precedent decisions establishing that the prior decision was based on an incorrect application of law or policy.

Upon reviewing the facts and evidence presented with the petitioner's second motion, the AAO withdrew its prior adverse finding regarding the issue of a qualifying relationship and upheld a finding of ineligibility based on the two remaining grounds.

With regard to the original ground for ineligibility, i.e., the beneficiary's proposed position in the United States, counsel reaffirms the prior claims made and provides additional information in the form of percentage breakdowns attributed to the beneficiary's various job responsibilities. However, this breakdown of vague responsibilities cannot be deemed a new fact, as it could have provided at any time prior to this motion. Not only is the breakdown not a new fact, it is also not supported by documentary evidence, as it relies, in part, on the assumption that the beneficiary was adequately supported by subordinates who were assigned with the petitioner's daily operational tasks at the time the Form I-129 was filed. In the present matter, the petitioner has provided information regarding a support staff that did not come into existence until after the petition was

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<sup>1</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

filed. As stated previously, 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).

Counsel's assertions regarding the beneficiary's purported executive responsibilities are not supported by evidence in the record. Moreover, counsel cites a number of unpublished AAO decisions in an effort to establish a similarity between this petitioner and those petitioners whose nonimmigrant petitions were approved. However, counsel's unsupported statements regarding the beneficiary's employment with the U.S. petitioner 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, the regulations at 8 C.F.R. § 103.5(a)(3) require that the petitioner present precedent decisions to support the claim that the prior decision was based on an incorrect application of law or CIS policy. The unpublished decisions cited in counsel's motion are not considered precedent decisions and, therefore, do not meet the requirements for a motion to reconsider.

In conclusion, the information and documentation provided is not new, as it could have been submitted on prior motion. Nor has counsel supported her assertions with precedent case law that establishes the factual or legal impropriety of the AAO's prior findings in its latest decision. Therefore, the petitioner has not met the regulatory requirements for a motion to reopen, as discussed in 8 C.F.R. § 103.5(a)(2), or a motion to reconsider, as discussed in 8 C.F.R. § 103.5(a)(3).

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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. Here, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.