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U.S. Citizenship
and Immigration
Services

D7

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File: EAC 06 174 54703 Office: VERMONT SERVICE CENTER Date: DEC 04 2007

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).

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

On May 16, 2006, counsel for the petitioner filed Form I-129, Petitioner for a Nonimmigrant Worker, to extend the classification of the beneficiary as an 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 beneficiary had initially been granted a one-year period of stay to open a new office in the United States. In a cover letter accompanying the instant petition to extend the beneficiary's L-1A classification, counsel claimed that the filing was incomplete, as counsel had lost some of the petitioner's supporting documentation during the remodeling of counsel's law offices. Counsel requested that the director issue a request for evidence to allow the petitioner the opportunity to supplement the record once the documents were located. Counsel further requested that the petitioner not be penalized for this oversight by counsel.

On September 5, 2006, the director issued a request for evidence. Specifically, the director requested evidence to show that the beneficiary had been and would be employed in a qualifying capacity. Specifically, the director requested a statement summarizing the beneficiary's past duties and the duties to be conducted in the future, as well as information pertaining to the staffing of the petitioner. The director also requested information regarding the duties of each staff member, as well as the number of contract employees, if any, the petitioner has utilized. In addition, the director requested evidence demonstrating that both the U.S. and foreign entities had engaged in the regular, systematic and continuous provision of goods or services.

Counsel responded on December 8, 2006 and requested a two-week extension in which to file the response to the request for evidence. Counsel claimed that due to a computer hard-drive "crash," his computerized calendar was lost and thus led to a miscalculation for the response deadline for the request for evidence. Counsel again requested that the delay not penalize the petitioner or the beneficiary.

On January 18, 2007, the director denied the petition, concluding that the beneficiary has not been nor will be employed in a primarily managerial or executive capacity. Specifically, the director stated that the letter submitted by counsel in response to the request for evidence did not address the director's queries.

On appeal, the petitioner alleges that counsel in fact submitted a letter in response to the request for evidence which adequately addressed the director's questions and included supporting documentary evidence.¹ The petitioner also claimed that the director did not specify which questions were not answered, and requests the opportunity to provide additional evidence in support of its position.

The petitioner's general objections on the Form I-290B, 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. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of*

¹ It is noted that the appeal on Form I-290B is filed by the petitioner, not counsel. Since there is no withdrawal of counsel's representation in the record, however, the AAO will presume that counsel is still acting as an authorized representative on behalf of the petitioner.

Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifically in this matter, although the petitioner made the brief claim that counsel's letter responded to the director's request for evidence, the record does not support this assertion. The record indicates instead that counsel's brief response, simply requesting additional time to respond, was not received by Citizenship and Immigration Services (CIS) until December 8, 2006, or seven days after the response deadline of Friday, December 1, 2006. If all requested additional evidence is not submitted by the required date, the petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). As such, the director's denial in this matter was wholly appropriate given the petitioner's untimely and inadequate response to the director's request for evidence.

Moreover, on the Notice of Appeal received on February 16, 2007, the petitioner clearly indicates 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 February 17, 2007. 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. As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, any 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 the petitioner 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. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.