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U.S. Citizenship
and Immigration
Services

D7

File: LIN 03 218 50604 Office: NEBRASKA SERVICE CENTER Date: JUN 05 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)

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: On December 18, 2003, the Director of the Nebraska Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) on January 20, 2004, and, on August 5, 2004, the AAO summarily dismissed the appeal. On August 26, 2004, the petitioner filed a motion to reconsider the AAO's decision with the Nebraska Service Center. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(3) and 103.5(a)(4).

The petitioner filed this nonimmigrant petition seeking to extend the employment of its sales manager 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, an Illinois corporation, claims to be in the cable television business.¹ The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner has been doing business as defined in the regulations. As indicated above, the AAO summarily dismissed the subsequently filed appeal of the director's decision on August 5, 2004, and the petitioner moved to reconsider the AAO's decision.

Upon review, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(3). The regulations at 8 C.F.R. § 103.5(a)(3) require motions to reconsider to "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 [Citizenship and Immigration Services] policy." In this matter, counsel asserts that the AAO erred in summarily dismissing its appeal from the director's December 18, 2003 decision on August 5, 2004 because it submitted a brief in support of its January 20, 2004 appeal on or about July 10, 2004, or about four weeks before the AAO dismissed the appeal. However, counsel did not support its motion with any pertinent precedent decisions to establish that the AAO's failure to consider a brief filed almost six months after the filing of an appeal, and when counsel has represented in the Form I-290B that a brief and/or evidence would be submitted within 30 days of the filing of appeal, was an incorrect application of law or policy. Although counsel states that "Service policy should accept the brief," he cites no authority or rationale for this declaration. For this reason alone, the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) as the motion fails to meet applicable requirements.

Regardless, the AAO concludes that its summary dismissal of the January 20, 2004 appeal was not in error. Counsel stated in the Form I-290B that a brief and/or evidence would be submitted to the AAO within 30 days. Counsel alleges that it filed a brief with the AAO on or about July 10, 2004, almost 6 months after the filing of the appeal. As a threshold matter, counsel offers no evidence that this brief was indeed filed with the AAO on or about July 10, 2004. To the contrary, the record is devoid of any evidence that a brief was ever filed other than as an attachment to the instant motion for reconsideration. Therefore, as counsel's allegation that the brief was submitted to the AAO before the AAO's summary dismissal has not been substantiated, the AAO concludes that its failure to consider the brief was not in error. The unsupported statements of counsel on appeal or in a

¹It should be noted that, according to the corporate records of the State of Illinois, the petitioner's corporate status has been "involuntarily dissolved." Therefore, as the petitioner can no longer be considered a legal entity in the United States, this would call into question its continued eligibility for the benefit sought if the motion were not being dismissed for the reasons set forth herein.

motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Also, the regulations at 8 C.F.R. § 103.3(a)(2)(vi) permit an affected party to file a brief with the Form I-290B. The AAO may grant an affected party additional time to file a brief. *See* 8 C.F.R. § 103.3(a)(2)(vii). Consistent with the discretion described in 8 C.F.R. § 103.3(a)(2)(vii), the Form I-290B extends to all appellants the option of submitting a brief and/or additional evidence directly to the AAO within 30 days. However, as is clear in both the Form I-290B and the regulations, any extensions of time greater than 30 days require a showing of "good cause." In this matter, counsel chose not to submit a brief until, allegedly, July 10, 2004, and the record is devoid of any request for additional time in which to file. Therefore, the AAO's summary dismissal and failure to consider the brief was not in error.

It should be noted for the record that, unless Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.