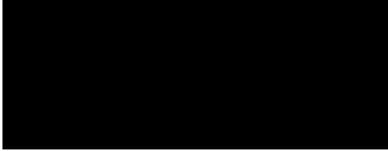


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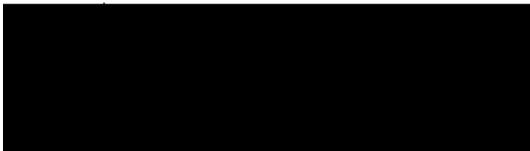
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FILE: EAC 05 080 53692 Office: VERMONT SERVICE CENTER Date: MAR 07 2007

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)

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner filed an untimely appeal, which the director treated as a motion to reopen and reconsider. After granting the motion, the director found that the grounds for the denial had not been overcome, and subsequently affirmed the previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it is engaged in the trade and import of compressors and motors. It seeks to employ the beneficiary as a manager/supervisor pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The director denied the petition based on the conclusion that the petitioner failed to establish that (1) the beneficiary would be employed in the United States in a managerial or executive capacity; (2) the beneficiary had been employed abroad in a primarily managerial or executive capacity; or (3) that sufficient funds were available to launch the new enterprise in the United States.

Counsel submitted general statements in a letter filed simultaneously with the appeal; however, these statements failed to adequately address the director's conclusions. In this letter, counsel asserts that another petition (EAC 05 800 11048) filed by the petitioner on behalf of another beneficiary was approved for L-1A status based upon the same evidence provided in the instant matter. Counsel concludes, therefore, that since that petition was approved based on identical evidence, "it stands to reason" that the instant petition must also be approved. There are two problems with counsel's argument. First, the director provided a detailed analysis and specifically cited the deficiencies in the evidence when rendering the decision in this matter. Counsel's statements on appeal, 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Second, if the other nonimmigrant petition were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. 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 Citizenship and Immigration Service (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).

Finally, contrary to counsel's assertions, it appears that the position offered to the beneficiary in the other petition (EAC 05 800 11048) was senior to the one offered to the beneficiary in the instant matter. According to the petitioner's business plan submitted on appeal, it appears that the beneficiary in that matter was offered the position of "president" of the U.S. entity, a position which outranks the position of "manager/supervisor." In fact, the organizational chart clearly demonstrates that the beneficiary in this matter would be directly supervised by the beneficiary of the other petition. Although counsel claims that

the beneficiary in the instant matter has the same tasks as the beneficiary in the prior petition, and that the only differences in the evidence consisted of passport and personal information, the fact remains that the positions offered to the beneficiaries do not appear to be identical in nature. Nevertheless, each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The evidence provided in this matter was insufficient to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

On the Form I-290B received on February 21, 2006, counsel for the petitioner clearly indicates that it would send a brief and/or additional 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 Monday, February 27, 2006. While the petitioner may request that it be granted additional time to submit an appeal, no such request was made in this case. *See* 8 C.F.R. § 103.3(a)(2)(vii). Even if additional time to submit a brief in support of the appeal had been requested and approved, 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.¹ As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, an 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 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. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.

¹ On January 26, 2007, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, the AAO has received no response from counsel or the petitioner.