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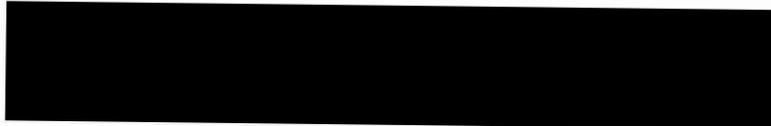
U.S. Citizenship
and Immigration
Services

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File: EAC 06 219 51872 Office: VERMONT SERVICE CENTER Date: APR 03 2008

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

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee to open a new office in the United States 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 is a corporation organized under the laws of the State of Illinois and is allegedly in the "investment and development" business. The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in a primarily executive or managerial capacity within one year.¹

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner states in the Form I-290B as follows:

The petitioner submitted evidence sufficient to meet the requirements set forth in 8 C.F.R. §214.2(l)(3)(v), governing new offices, that the job duties of the position offered to the beneficiary were primarily executive or managerial in nature; the beneficiary was employed as manager for at least one year during the preceding three years with the company abroad; and that the foreign entity had the financial intent and ability to capitalize the new investment and remunerate the beneficiary for his services.

Counsel further indicated that it would be sending a brief and/or evidence to the AAO within sixty days. On April 26, 2007, counsel requested an extension of time in which to submit a brief to May 1, 2007. On April 26, 2007, the AAO granted this request and extended the filing deadline to May 15, 2007. However, as it appeared that neither a brief nor additional evidence had ever been submitted to the AAO, the AAO sent a fax to counsel on March 20, 2008 requesting that she submit the brief and/or additional evidence, if these materials had previously been submitted by the above deadline, within five business days along with evidence of the date they were originally filed with Citizenship and Immigration Services. Counsel replied to the AAO's request on or about March 26, 2008. In response, counsel submitted a copy of an undated, unsigned brief and a two-page receipt from FedExKinko's. While the receipt indicates that the "Vaishali Corporation Brief" was produced by the FedExKinko's location at 325 7th Street NW, Washington, DC, on or about May 15, 2007 and that counsel requested delivery to the AAO by 4:00 p.m. on May 15, 2007, the record does not establish that this brief was actually delivered to the AAO. Accordingly, it does not appear as if counsel has timely filed a brief in this matter, and the unsigned, undated brief faxed to the AAO on or about March 26, 2008 will not be considered.

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

¹It should be noted that, according to Illinois state corporate records, the petitioner's corporate status in Illinois is not in "good standing." Therefore, this would call into question the petitioner's continued eligibility for the benefit sought if the appeal were not being summarily dismissed.

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 the denial of the petition.

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 this proceeding, the appeal must be summarily dismissed. Counsel's assertion in the Form I-290B fails to identify any factual or legal errors for the AAO to consider on 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.