U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

D-7

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 02 113 54085 Office: TEXAS SERVICE CENTER Date: AUG 03 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

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DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The director subsequently granted a motion to reopen and reconsider, but later affirmed the previous denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a hotel management and real estate investment business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president and chief representative officer. The director determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity and that the petitioner has not been doing business pursuant to the regulations at 8 C.F.R. § 214.2(l)(1)(2)(ii)(H).

On appeal, counsel claims that the director's denial was arbitrary and capricious and states that the director placed too much emphasis on the petitioner's quarterly tax return. In support of the appeal, the petitioner submitted a copy of its 2000 IRS Form 1120A, U.S. Corporation Short Form Income Tax Return, reflecting no gross receipts or sales, no wages paid, and generally, no business activities.

It is noted that the director properly noted the petitioner's quarterly tax return in her decision but denied the petition for multiple reasons. Counsel does not take issue with the director's finding that the beneficiary has not been employed in a managerial or executive capacity and that the petitioner has not been doing business in a regular, systematic, and continuous manner.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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.