U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D-7

[redacted]

FILE: SRC 01 207 52167 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: SELF-REPRESENTED

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 Administrative Appeals Office ("AAO") subsequently reviewed the matter and dismissed the appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a children's entertainment business that seeks authorization to extend the petition's validity and the beneficiary's stay to employ the beneficiary temporarily in the United States as its president and general manager. The director determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal based on the determination that the petitioner failed to establish that the beneficiary would be performing primarily managerial or executive duties.

On motion, the petitioner provides a detailed explanation of the events that lead up to its commencement of a children's entertainment business and the reasons why its original business plan did not succeed. The petitioner also discusses the current financial progress and expanded personnel status that its business has undergone since the filing of the petition.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In the instant case, most of the events discussed by the petitioner on motion either took place after the petition was filed or after the AAO dismissed the petitioner's appeal.

The regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

> A motion to reconsider must 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 CIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Although the petitioner provides the AAO with a number of reasons that explain why the beneficiary was not employed in a managerial or executive capacity after the petitioner's first year of operation, 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 support an executive or managerial position. There is no provision in CIS regulations, even given the petitioner's specific circumstances, that allows for an extension of this one-year period. The petitioner does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

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. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.