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

U.S. Citizenship and Immigration Services

D7

[redacted]

FILE: SRC 03 106 51094 Office: TEXAS SERVICE CENTER Date: AUG 19 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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. Based on the petitioner's failure to respond to the director's request for additional evidence, the director determined that the petition was abandoned and could not be appealed. However, the director informed the petitioner of its right to file a motion to reopen and/or reconsider the denial. Consequently, the petitioner submitted a Form I-1290B with the requisite fee of $110 and additional evidence. Although the AAO acknowledges the service center's instructions informing the petitioner of its right to submit a motion to reopen or reconsider, the AAO has no jurisdiction over the motion, as the AAO was not the official body that made the latest decision in the proceeding. *See* 8 C.F.R. 103.5(a)(1)(ii). As stated above, the official body that made the latest decision in the instant matter was the Texas Service Center. As such, the AAO must hereby reject the appeal.

It is noted, however, that 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.

The petitioner, through counsel, submits additional evidence claiming that such documents were not available at the time of the director's request. The submissions include a description of the beneficiary's past and proposed duties, the petitioner's organizational chart, the foreign entity's organizational chart, and a number of the foreign entity's bank statements and invoices, all reflecting the company's finances and sales that took place in 2002. The petitioner also submitted a response to a service request for additional evidence for a different petitioner, one which apparently sponsored the beneficiary in another L-1A visa petition. Although the response contains a detailed percentage breakdown of the beneficiary's duties, it has no relevance to the matter at hand as it was filed several years before the instant petition and by a company that has no known relation to the instant petitioner.

Therefore, even if the AAO had jurisdiction over the petitioner's motion, the fact remains that counsel failed to cite any legal precedent or applicable law that would indicate an error on the part of the service center in denying the petition. Furthermore, there is no evidence or indication that the documents submitted, particularly the description and percentage breakdown of the beneficiary's duties, were not available at the time of the director's request for additional evidence. As such, the petitioner did not meet the requirements of a motion to reconsider and the motion would have been 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 appeal is rejected.