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U.S. Citizenship and Immigration Services

[redacted]

File: EAC 02 057 51516 Office: VERMONT SERVICE CENTER Date: JUL 28 2004

IN RE: Petitioner:
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)

IN 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

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

The petitioner claims that it is affiliated with an Indian organization. It claims to wholesale and distribute jewelry. It seeks to extend the temporary employment of the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition concluding that the petitioner had not established the beneficiary would be employed in a managerial position.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, 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."

On the Form I-290B Notice of Appeal, filed on August 12, 2002, the petitioner indicated that a brief and/or evidence would be sent to the AAO within 30 days. To date, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The statement on the appeal form reads:

> The Immigration and Naturalization Service incorrectly applied the law and regulations in this matter. As set forth in support of the application for extension, the beneficiary of the initial L-1 visa petition did not enter the United States until many months after the initial L-1 petition was approved. This was due to delays at the US Consulate in India which were beyond the control of the beneficiary including but not limited to the events of September 11, 2001.
>
> The request for extension was made in order to allow the beneficiary an opportunity to establish and develop his new office in the United States to the point where a showing of managerial and executive capacity could have been made.
>
> The INS in considering this extension application, treated the applicant as though he had entered the United States at the time of the approval of the initial L-1 visa petition.

The regulations at 8 C.F.R. § 214.2(l)(3)(v)(C) allow 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 Citizenship and Immigration Services (CIS) regulations that allows the director to exercise discretion for the 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.

Counsel does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal. The regulations mandate the summary dismissal of 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. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.