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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 00 033 50181 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 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

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The petitioner submitted an appeal to the Administrative Appeals Office (AAO) on January 31, 2000. The AAO affirmed the director's decision. The petitioner subsequently filed a motion to reopen. The AAO granted the motion to reopen and affirmed the previous decisions. This matter is now before the AAO on a motion to reconsider the previous decision. The motion to reconsider will be dismissed.

The petitioner is operating as a "trading" company for the distribution of soft drinks manufactured by the foreign company for sale in the United States. It currently employs the beneficiary as vice-president, and seeks to extend the beneficiary's temporary employment. The petitioner filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition concluding that the beneficiary has not been employed in the United States in a primarily managerial or executive position.

The petitioner filed an appeal asserting that Citizenship and Immigration Services (CIS) "applied arbitrary standards to determine 'sufficiency' of the evidence submitted," made erroneous assumptions, and ignored "compelling facts and evidence" in the record. The AAO dismissed the appeal concluding that the petitioner's vague and generalized job description of the beneficiary's job duties was insufficient to demonstrate employment of the beneficiary as a manager or executive in the United States. The petitioner subsequently filed a motion to reopen in which it contended that the petitioning organization had hired additional employees, including an independent contractor, to assist in the distribution of the petitioner's products. The AAO granted the petitioner's motion yet affirmed the previous decision noting that the record did not contain evidence substantiating the employment of additional employees. The AAO denied the petition, again determining that the petitioner had failed to submit documentation of the beneficiary's employment in a primarily managerial or executive capacity.

On May 9, 2002, the petitioner filed the present motion to reconsider. In a letter supporting the motion, the petitioner outlined several job duties of the beneficiary, and asserted that the beneficiary's job responsibilities are managerial "because the personnel [the beneficiary] supervised did include professionals such as [a] bookkeeper, project coordinator who must have a[t] least [a] two year college degree." The petitioner also submitted a letter from the foreign company "to reconfirm [the beneficiary's] Managerial position in China before she was transferred to the U.S. subsidiary."

With regard to a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(3) indicates that:

> 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 regulation at 8 C.F.R. § 103.5(a)(4) further states that a motion that does not meet the above-noted requirements shall be dismissed.

In the present matter, the petitioner has not identified any precedent decisions or case law to establish that the AAO's decision was based on incorrect law or CIS policy. Additionally, the petitioner has not demonstrated that, based on the record at the time of review, the AAO's decision was incorrect. Pursuant to 8 C.F.R. § 103.5(a)(4), the motion will 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. Inasmuch as counsel has failed to identify specifically an erroneous application of law, the regulations mandate the dismissal of the motion.

ORDER: The motion will be dismissed.