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

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D7

[redacted]

NOV 01 2004

FILE: SRC 00 034 51846 Office: TEXAS SERVICE CENTER Date:

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, Texas Service Center, denied the petition for a nonimmigrant visa. On June 20, 2000, the petitioner filed an appeal, which was dismissed by the Administrative Appeals Office (AAO) in a decision dated January 18, 2001. The petitioner subsequently filed a motion to reopen and reconsider on April 12, 2001. The AAO rejected the motion, as the motion was untimely filed. The matter is again before the AAO on motion to reopen and reconsider. The instant motion will be dismissed.

The petitioner filed the nonimmigrant petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida that is engaged in the restoration of fire damaged homes and businesses. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Caracas, Venezuela. The petitioner sought to extend the beneficiary's stay for three years.

The regulation at § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at § 103.5(a)(3) states:

> 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 [Citizenship and Immigration Services (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.

Here, counsel explains that the previous motion to reopen and reconsider was untimely filed due to the absence of the petitioner's certified public accountant from the office. Counsel explains that the petitioner was unable to obtain necessary documentation from its accountant during this time. Counsel submits a letter from the accounting firm confirming that the accountant in charge of the petitioner's account "was absent from work for an extended period of time." In addition, counsel provides an explanation as to why the beneficiary should be considered to be employed in a primarily managerial or executive capacity.

Other than submitting evidence related to the employment capacity of the beneficiary, which is not germane to the instant motion, counsel has not provided any new facts or precedent law as a basis for the motion to reopen and reconsider. The record reflects that a similar letter from the accountant explaining his absence from the office was submitted with the first motion to reopen and reconsider for review by the AAO. The AAO properly considered this documentary evidence in its decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, 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. Here, that burden has not been met.

ORDER: The motion is dismissed.