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

U.S. Citizenship and Immigration Services

[redacted]

OCT 10 2004

FILE: SRC 03 096 52942 Office: TEXAS SERVICE CENTER Date:

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)

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

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DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, the beneficiary's foreign employer, filed this nonimmigrant petition seeking to employ the beneficiary 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 in Alsina, Argentina that produces stone, marble and granite and is operating as an importer and exporter. The petitioner claims that it is the parent of the petitioning organization, which is organized in the State of Nevada. The petitioner now seeks approval for the beneficiary's employment as the petitioner's sales manager for one year.

The director determined that the petitioner did not demonstrate that the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity. The director concluded that the beneficiary would be performing the day-to-day operations of the business, as he would be the United States entity's sole employee. Accordingly, the director denied the petition.

In an appeal filed on July 24, 2003, counsel claims that Citizenship and Immigration Services (CIS) neglected to consider the United States company a new office as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F). Counsel states that "the Petitioner explained through evidence and the support letter that although its subsidiary firm in the U.S. . . . had been registered as a corporation December of 2000, the company had just started to be operational since the end of 2002."

Counsel also claims in her brief on appeal that the petitioner demonstrated the beneficiary's employment in a managerial capacity. Counsel refers to documentation previously submitted by the petitioner, including the beneficiary's certificates, diploma, and course certification, as evidence of the beneficiary's proposed position as a manager. Counsel also addresses the letter submitted by the president of the United States corporation, as confirmation that the beneficiary would not perform the day-to-day operations of the U.S. business. Counsel states:

> In fact, Ms. [redacted] who is the President of the U.S. subsidiary company, submitted a letter stating that she runs the day to day business of the company and that she was in the process of interviewing sales associates who were to be employed and directly supervised and under the control of the Beneficiary upon his arrival.

Counsel erroneously concludes that the United States organization should be considered a new office. The United States entity's 2001 corporate tax return shows that during that year the corporation yielded a gross profit of approximately $9,000 as a result of goods sold. As the instant petition was filed on February 14, 2003, approximately two years later, the record demonstrates that the United States entity has been doing business for more than one year, and therefore, will not be considered a new office. It is also irrelevant that in November 2002 the United States corporation applied for authorization to begin transacting business in Arizona.[1]

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[1] The petitioner stated in its June 17, 2003 response to the director's request for evidence that although the United States entity was incorporated in December 2000, it had not been doing business since that time, and in November 2002 applied for authorization to transact business in Arizona "as this is the State which we found to be most appropriate for our business."

Also, while counsel claims that CIS erroneously based its denial on the U.S. organization's limited number of employees, counsel offers no additional evidence on appeal in support of the beneficiary's proposed employment in a qualifying capacity. Further, counsel's reference to the beneficiary's approximately twenty-seven years of employment abroad is irrelevant to determining the capacity in which the beneficiary would be employed in the United States.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Other than claiming that the petitioner should have been considered a new office, counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. All evidence submitted by counsel on appeal was properly considered by the director in her decision. Accordingly, the appeal must be summarily 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.