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

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 03 053 54010 Office: TEXAS SERVICE CENTER Date: SEP 2 2

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it is a manufacturer and distributor of carpets and rugs. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president, 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 failed to demonstrate that under the extended petition the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Specifically, the director concluded that: (1) the beneficiary would be engaged in the day-to-day operations of the petitioner's business; (2) the beneficiary would be performing the functions of the business rather than managing or directing the functions; and (3) the United States entity has not grown to a point where it could remunerate the beneficiary.

On the Form I-290B appeal, counsel asserts:

1. The Texas Service Center – BCIS/INS has erred in determining that the beneficiary of this case, [redacted] will not be primarily managing or directing, rather than performing the function and that he will not be functioning at a senior level within the organization;
2. The Texas Service Center – BCIS/INS has erred in determining that the petitioning company has not grown to a point of being able to remunerate the beneficiary; and
3. The Texas Service Center – BCIS/INS has erred in determining that the totality of the evidence has shown that the beneficiary will not be engaged in executive, managerial duties or managing an essential function of the organization.

Counsel notes that a brief or evidence would be submitted to the AAO within 30 days. The appeal was filed on June 30, 2003. As of this date, the AAO has received nothing further and the record will be considered complete.

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.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, 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.