U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3402
Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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FEB 23 2005

FILE: SRC 03 185 51574 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. The petitioner subsequently filed an appeal. The director treated the appeal as a motion to reopen and reconsider and affirmed her previous decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it operates a freight forwarding business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its executive 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 on August 25, 2003, determining that the petitioner did not establish that the beneficiary would primarily be performing managerial or executive duties.

On October 1, 2003, the petitioner submitted an appeal. On the Form I-290B, counsel stated "The BCIS has abused its discretion in denying this L-1A extension." No accompanying brief or evidence was submitted. The Director, Texas Service Center, treated the appeal as a motion to reopen or reconsider and affirmed her previous decision on November 3, 2003. The AAO notes that a reviewing official is required to promptly forward an appeal and the record of proceeding to the AAO when favorable action is not warranted. *See* 8 C.F.R. § 103.3(a)(2)(iv). Therefore, the director erred in treating the appeal as a motion in order to issue an unfavorable decision. Had the appeal been properly forwarded to the AAO, it would have been rejected as untimely filed under 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

On December 1, 2003, counsel filed a second appeal. On the Form I-290B, counsel simply asserts: "We wish to appeal this case, not a motion to reopen." Counsel indicates that he is not submitting a separate brief or evidence.

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. Here, the petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.