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invasion of personal privacy

U.S. Citizenship and Immigration Services

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FEB 28 2005

FILE: WAC 01 151 51366 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:

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. On October 29, 2001, the petitioner filed an appeal with the Administrative Appeals Office (AAO). The AAO dismissed the appeal on December 19, 2002. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner filed the nonimmigrant petition seeking to employ the beneficiary as an L-1 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 California that operates fast food outlets in the food service industry. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Pasig City, Philippines. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as its corporate financial officer.

The director denied the petition concluding that the petitioner had failed to demonstrate that the beneficiary has been employed abroad and would be employed in the United States entity in a specialized knowledge capacity. The director noted that the petitioner did not establish through probative evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field.

On appeal, counsel contended that Citizenship and Immigration Services (CIS) applied a restrictive standard requiring the beneficiary to possess "unique" knowledge when analyzing whether the beneficiary would be employed in the United States in a specialized knowledge capacity. Counsel also claimed that CIS failed to consider evidence other than the beneficiary's job description, particularly letters and statements made by corporate officers of the foreign and United States entities, submitted in support of the petition.

The AAO determined that the petitioner did not establish that the beneficiary has specialized knowledge or that she has been or would be employed in a capacity involving specialized knowledge. The AAO concluded that the beneficiary's training and work experience abroad provided her with the knowledge to competently perform as an accounting specialist, but that her knowledge could not be considered special or advanced. The AAO also noted beyond the decision of the director that the petitioner failed to establish that a qualifying relationship exists between the petitioning organization and the beneficiary's foreign employer as required in the Act at § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

Counsel filed the instant motion to reopen and reconsider on January 10, 2003.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> 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 Service 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.

Counsel has not submitted any new evidence and has not stated any reasons for reconsideration of the AAO decision in this matter. On motion, counsel restates portions of the AAO decision and reiterates statements made by the foreign and petitioning entities' corporate officers, which had already been provided for the record and considered by the AAO on appeal. Counsel does not identify any precedent decisions demonstrating that the AAO decision was based on an incorrect application of law or policy. *See* § 103.5(a)(3). 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, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

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.