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U.S. Citizenship  
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FILE: WAC 04 024 53665 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

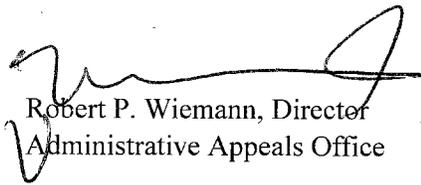
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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. 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 company engaging in the business of importing, marketing and installing vinyl liners. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its marketing manager, 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 has failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity.

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

The beneficiary is a manager and the decision misconstrues the daily d-ties [sic] of the beneficiary. The beneficiary does not do the actual work but manages personnel who have management duties or operate at a senior non clerical position.

Counsel submits additional evidence with the Form I-290B. The additional evidence includes (1) a letter from the petitioner regarding the director's decision, (2) the U.S. entity's 2003 tax return, (3) correspondence with the Congressman representing Arizona 3<sup>rd</sup> District of the U.S. House of Representatives, and (4) a new organizational chart for the U.S. entity.

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. Furthermore, the 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.

The AAO notes that counsel submitted no brief in support of the claims stated on Form I-290B. The petitioner also did not identify in the letter accompanying the appeal any errors of law or fact in the director's decision. Inasmuch as the petitioner and counsel have failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The AAO further notes that in its letter on appeal, and in the accompanying revised organizational chart of the U.S. entity, the petitioner offers a description of the beneficiary's role and duties within the U.S. entity that is materially different from the one set forth in the initial petition and supporting materials. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of*

*Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to the requirements of the Citizenship and Immigration Services. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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.