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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: SRC 03 070 50133 Office: TEXAS SERVICE CENTER Date: JUN 02 2005

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:

SELF-REPRESENTED

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 doing business as a retail footware and clothing sales business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its chief executive officer pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). [1] The director denied the petition based on the following conclusions: 1) the petitioner has failed to demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity; and, 2) the petitioner has not established that it has currently been doing business.

On the Form I-290B appeal, counsel indicates that a separate brief or evidence would not be submitted. Counsel simply asserts:

> The I-129 filed in January of 2003 was an extension, not the initial application as the denial implies, therefore, significantly more information was not merited at that time. However, substantial documentation was provided upon response to the subsequent RFE. Denial references a name discrepancy. Such discrepancy was clearly explained with affidavits, etc. in the initial application. It is apparent that officer #147 did not read [the] original petition. Additional financial statements are provided for your thorough review.

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.

In addition, pursuant to 8 C.F.R. § 214.2(l)(14)(i), if the petitioner is filing a petition to extend the beneficiary's stay for L-1 classification, the regulation requires that, "the petitioner shall file a petition extension on Form I-129 to extend an individual petition under section 101(a)(15)(L) of the Act. Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired." *Id.*

In the present matter, counsel in her February 3, 2003 letter responding to the director's request for additional evidence, stated, "Contrary to logic and standard practices, it is well established that for

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[1] The AAO notes that on the Form I-129, the petitioner indicated that it intended to employ the beneficiary from December 2002 until December 2009. However, the regulations at 8 C.F.R. § 214.2(l)(15)(ii) state, in part, that "an extension of stay may be authorized in increments of up to two years for beneficiaries of individual . . . petitions. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted."

extensions of which previously approved employment has not changed, the employee does not need to re-document the basic facts regarding the employment." However, counsel inaccurately interpreted the regulations. Although supporting documentation is not required, it is required if the director requests such documentation. *See id.*

Further, 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.

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.

Beyond the decision of the director, the AAO notes that the petitioner's attorney rather than the petitioner signed the Form I-129. According to the regulation at 8 C.F.R. § 103.2(a)(2), the petitioner is required to sign the petition. Thus, the petition was not properly filed and should have been rejected by the Texas Service Center.

In addition, the regulation at 8 C.F.R. § 103.3 provides that an attorney may represent an affected party who is the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. *See id.* Here, the beneficiary rather than the petitioner signed the form G-28. Although the beneficiary may have been authorized to sign the G-28 on behalf of the petitioner, the petitioner is not named anywhere on the form. A notice of appearance entered in petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by CIS. *See* 8 C.F.R. § 292.4. Therefore, the attorney technically never entered her appearance on behalf of the petitioner.

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.

CC: [redacted]