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U.S. Citizenship
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JUN 08 2005

FILE: EAC 96 038 53502 Office: VERMONT SERVICE CENTER Date:

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed an appeal with the Administrative Appeal Office (AAO) that was dismissed. The petitioner subsequently filed a motion to reopen and reconsider that was granted by the AAO, and the previous decision was affirmed. A second, third, and fourth motion were also dismissed by the AAO. A fifth motion to reopen was granted, and the previous decisions of the director and the AAO were affirmed. The matter is again before the AAO on a sixth motion. The motion to reopen and reconsider will be dismissed.

The petitioner, [REDACTED] endeavors to classify the beneficiary as a manager or 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 petitioner imports, wholesales, and distributes shoes, umbrellas, raincoats, and other goods from China. It seeks to extend the petition's validity and the beneficiary's stay temporarily as the U.S. entity's vice president of international marketing.

The director determined that the petitioner failed to establish that the beneficiary would be primarily employed in a managerial or executive capacity. The director's decision was affirmed by the AAO.

In the present motion, the petitioner submits a letter reporting the sales revenue of the company from 1995 until 2003 and further explaining the beneficiary's duties. However, a review of the evidence submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. section 103.5(a)(2). 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."

On review, the record reveals that the sales and financial data had been considered in the previous decision of the director and the AAO or is evidence that was previously available and could have been discovered or presented in the previous proceeding. In addition, the evidence is not supported by documentary evidence or affidavits. 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). Accordingly, the evidence submitted on motion will not be considered new and will not be considered a proper basis for a motion to reopen.

In addition, the petitioner failed to submit any pertinent precedent decisions pursuant to 8 C.F.R. § 103.5(a)(3). 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 does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. Counsel does not argue that the previous decisions were based on an

incorrect application of law or Citizenship and Immigration Services (CIS) policy. Accordingly, the petitioner's motion does not meet the requirements of a motion to reconsider.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen and reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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 and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.