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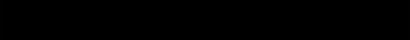
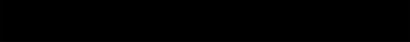
**U.S. Citizenship
and Immigration
Services**

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File: SRC-03-149-52564 Office: TEXAS SERVICE CENTER Date: **JUN 29 2005**

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)

IN 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, Texas Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to deny the petition. The matter is now before the AAO on motion to reconsider. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its President as an L-1A nonimmigrant intracompany transferee 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 is a corporation organized in the State of Florida that operates as a distributor of plastics. The petitioner claims that it is the subsidiary of [REDACTED] located in San Pedro Sula, Honduras. The beneficiary was initially approved for L-1A status, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The AAO affirmed this determination on appeal.

On motion, counsel for the petitioner submits a brief to address the AAO's decision. Counsel asserts that the AAO erroneously dismissed the appeal based on a finding that the petitioner submitted insufficient detail regarding the beneficiary's duties. Counsel states that the evidence of record supports that the beneficiary will be employed in a primarily managerial or executive capacity, and that the AAO failed to "review or consider any of the evidence submitted with the petition, other than the employee tax return."

The regulation at 8 C.F.R. § 103.5(a)(2) 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 assert that the AAO's decision was based on an incorrect application of law or Service policy. *See* 8 C.F.R. § 103.5(a)(2). Counsel's assertions regarding the AAO's decision are limited to the AAO's consideration of the petitioner's submitted evidence.

Though counsel claims that the AAO failed to fully consider the petitioner's evidence, the AAO's decision clearly references numerous documents and information in the record, including the beneficiary's job descriptions, the petitioner's IRS Forms 941 quarterly reports, letters from counsel, the beneficiary's resume, a sample phone bill, and the petitioner's 2002 gross income. The AAO's analysis focused on the beneficiary's stated duties, yet the decision reveals that the AAO considered other evidence in forming a conclusion regarding the beneficiary's true employment capacity. Accordingly, counsel's assertions are limited to disagreement over the appropriate weight to assign to the beneficiary's job description as opposed to other documentation in the record. For example, counsel asserts that the petitioner's substantial gross income of over \$800,000 reflects that the beneficiary, as the sole employee, will act in a managerial or executive capacity. However, the beneficiary's actual duties

themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner's gross income or volume of sales do not serve as prima facie evidence that the beneficiary will act in a primarily managerial or executive capacity. The petitioner bears the burden to sufficiently explain the beneficiary's duties such to establish that they will be primarily managerial or executive in nature. See section 291 of the Act, 8 U.S.C. § 1361. The AAO appropriately discussed the descriptions of the beneficiary's duties in reaching its decision.

It is further noted that counsel failed to cite any precedent decisions that support his claims.

Based on the foregoing, counsel has neither stated sufficient reasons for reconsideration nor supported his assertions with pertinent precedent decisions, such to establish that the AAO's decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(2). Accordingly, the motion will be dismissed.

Finally, it should be noted for the record that, unless Citizenship and Immigration Services (CIS) directs otherwise, the filing of a motion to reopen or 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. 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.

ORDER: The motion is dismissed.