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FILE: WAC-04-007-50015 Office: CALIFORNIA SERVICE CENTER Date: JUL 17 2006

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, Chief
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 computer software business. It seeks to employ the beneficiary temporarily in the United States as its 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 based on the following independent conclusions: 1) the petitioner had not established that a qualifying relationship with a foreign entity existed; and 2) that substantial capital had been invested such that the business could establish itself and commence doing business.

On the Form I-290B appeal, counsel simply asserts that the documents in the record were not considered and that it had established eligibility. Counsel further states that a brief or evidence would be submitted to the AAO within 30 days. The appeal was filed on June 7, 2004. As of this date, the AAO has received nothing further and the record will be considered complete.¹

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. Although counsel for the petitioner asserted on the I-290 that the record was not considered, this argument has no basis in fact. The record was only lightly documented by the petitioner, and the petitioner failed to respond to a number of requests in a 10 page request for evidence issued by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The few documents that were submitted fall substantially short of demonstrating eligibility. Thus, counsel's arguments are not persuasive.

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.

¹ On December 14, 2005, the AAO sent a fax to counsel for the petitioner. The fax advised counsel that no evidence or brief had ever been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. Counsel's response to this fax failed to provide a copy of a previously submitted brief or evidence and simply stated that it could not provide this documentation because the beneficiary had requested the file from their office six months ago. Absent evidence that a brief or evidence had ever been submitted on appeal, the AAO must consider the record as complete.

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.

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.