



U.S. Citizenship
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FILE: WAC 04 050 52430 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2006

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, 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 a jewelry importer and wholesaler. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

In response to the denial, counsel for the petitioner simultaneously filed a motion to reconsider as well as an appeal. The director granted the motion, and upon review of counsel's arguments, the director affirmed the previous decision.

On appeal to the AAO, counsel for the petitioner indicated on Form I-290B that it would submit a brief and/or additional evidence to address the director's denial within thirty days. Although counsel submitted a brief statement on the Form I-290B, he failed to adequately address the director's conclusions. In this brief statement, counsel states that the director's reason for denying the extension constituted "an abuse of discretion and lack of underlying fairness given the admitted mistaken judgment of the United States Citizenship and Immigration Services." In addition, counsel asserted that the denial "fails to provide knowledgeable insight into the business, as would necessarily be needed in drawing the broad and unfounded conclusion that it did."

The director, however, denied the petition based on the petitioner's failure to establish that the beneficiary will be employed in a primarily managerial or executive capacity, noting that: (1) the record contained insufficient evidence to establish that the petitioner had the organizational complexity to support the beneficiary in a qualifying position; (2) there was no evidence to show that the beneficiary directed the management of a department, subdivision or a function of the U.S. entity; (3) the beneficiary did not supervise a subordinate staff of professional, managerial, or supervisory employees who would relieve him from performing non-qualifying duties; and (4) the evidence indicated that contrary to the petitioner's contentions, a preponderance of the beneficiary's duties focused on the general tasks necessary to produce the goods and services of the organization as opposed to operational or policy management. Counsel's general objections on the Form I-290B, without specifically identifying any errors on the part of the director, is simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On the Notice of Appeal received on November 10, 2004, counsel for the petitioner clearly indicates that it would send a brief with the necessary evidence [to the AAO] within thirty days. According to 8 C.F.R. § 103.3(a)(2)(i), the petitioner "shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision." While the petitioner may request that it be granted additional time to submit an appeal, no such request was made in this case. See 8 C.F.R. § 103.3(a)(2)(vii). Even if additional time to submit a brief in support of the appeal had been requested and approved, to date there is no indication or evidence that the petitioner ever submitted a brief

and/or evidence in support of the appeal with the Service or with the AAO.¹ As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, an erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(1)(v).

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.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.

¹ On April 10, 2006, the AAO sent a fax to counsel. 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. As of the date of this decision, the AAO has received no response from counsel or the petitioner.