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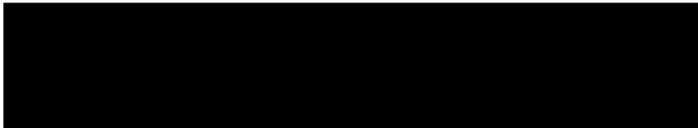
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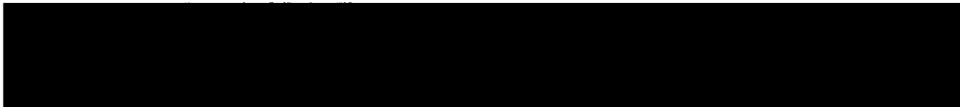
FILE: LIN 02 146 54653 Office: NEBRASKA SERVICE CENTER Date: FEB 05 2007

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, Nebraska Service Center denied the nonimmigrant visa petition. The petitioner filed an appeal and a subsequent motion with the Administrative Appeals Office (AAO). Each was ultimately dismissed. The matter presently before the AAO is the petitioner's second motion. The motion will be granted. The AAO's prior decision will be withdrawn in part and affirmed in part.

The petitioner is an Oregon entity seeking to temporarily employ the beneficiary as its vice president. Accordingly, the petitioner endeavors to classify the beneficiary 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 director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity and denied the petition in a decision dated January 22, 2003. The AAO affirmed the director's finding, dismissing the petitioner's appeal and in addition found that the petitioner failed to provide sufficient evidence of a qualifying relationship and to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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. The petitioner subsequently filed a motion before the AAO seeking reopening of the case and reconsideration of the AAO's decision dismissing the appeal.

The regulations at 8 C.F.R. § 103.5(a)(3) state, 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 [CIS] 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.

The AAO dismissed the petitioner's motion concluding that the petitioner failed to submit new evidence or state reasons for reconsideration supported by pertinent precedent decisions establishing that the prior decision was based on an incorrect application of law or policy.

The petitioner has since filed a second motion seeking to reopen and reconsider the AAO's prior decision. Upon review of the documentation submitted thus far, the AAO concludes that the petitioner has submitted sufficient evidence to establish its qualifying relationship with the beneficiary's foreign employer. Therefore, the AAO hereby withdraws its prior adverse finding regarding the issue of a qualifying relationship.

Notwithstanding the favorable finding regarding one of three previously cited grounds for the petitioner's ineligibility, the AAO concludes that the petitioner remains ineligible based on the two remaining grounds.

With regard to the original ground for ineligibility, i.e., the beneficiary's proposed position in the United States, counsel reiterates her dismay at the AAO's conclusion and provides documentation of employees retained by the petitioner in 2004. However, as stated in the AAO's prior decision, 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).

Counsel also provides a letter dated August 2, 2005 from [REDACTED] who stated that based on the information provided by the petitioner it is his professional opinion that the beneficiary would be employed in a qualifying managerial or executive capacity. However, the professor clearly states that his professional opinion is directly based on information provided by the petitioner, not based on his own personal knowledge or based on his review of the evidence of record before the director. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this case, the professor's opinion is a third-party attestation that in affect appears to be no different than any claim made by the petitioner. As such, the professor's statements must be supported by documentary evidence much like the petitioner's own claim. *See 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)).

As previously conveyed in the AAO's decisions, a fair assessment of the beneficiary's proposed employment capacity with the U.S. petitioner requires a detailed description of the beneficiary's duties as well as an analysis of the petitioner's staffing composition at the time the Form I-129 was filed. A detailed job description lets the AAO know the actual duties the beneficiary would perform on a daily basis and the staffing structure indicates whether the petitioner was adequately staffed at the time of filing such that the beneficiary would be relieved from having to primarily perform non-qualifying tasks. Neither [REDACTED] opinion nor the petitioner's 2004 staffing establish the petitioner's ability to employ the beneficiary in a primarily managerial or executive capacity in 2002.

With regard to the beneficiary's employment abroad, the AAO determined that counsel's restatement of the beneficiary's job description and claims that the beneficiary was a function manager were insufficient to overcome the AAO's adverse findings.

On motion, counsel provides a list of the beneficiary's general job responsibilities and submits an organizational chart of the foreign entity during the beneficiary's employment abroad. However, the broad overview of the beneficiary's responsibilities is insufficient to overcome the AAO's prior findings. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103. More importantly, the information and documentation provided is not new, as it could have been submitted on prior motion. Nor has counsel supported her assertions with precedent case law that establishes the factual or legal impropriety of the AAO's prior determination regarding this issue. Therefore, the petitioner has not met the regulatory requirements for a motion to reopen, as discussed in 8 C.F.R. § 103.5(a)(2), or a motion to reconsider, as discussed in 8 C.F.R. § 103.5(a)(3).

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. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.