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U.S. Citizenship
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FILE: SRC 03 244 52670 Office: TEXAS SERVICE CENTER Date: AUG 19 2005

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: SELF-REPRESENTED

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it is a specialty restaurant engaged in catering and events planning. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president 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 conclusion that the petitioner failed to establish that: (1) the beneficiary will be employed in a managerial or executive capacity; or that (2) the U.S entity had been doing business for the year prior to the filing of the petition as required by the regulations.

On appeal, the petitioner submitted a letter in addition to Form I-290B. Although the petitioner submitted a detailed statement in the accompanying letter, it failed to adequately address the director's conclusions. In this letter, the petitioner explains the current staffing of the petitioner and discusses the current duties of the beneficiary due to changes in staffing since the filing of the petition. The petitioner also claims that it has been doing business since May 24, 2003 and submits copies of its U.S. Corporation Income Tax Return for the year 2003 as well as copies of receipts and business licenses in support of this contention. However, despite the observations set forth in the letter, the petitioner fails to address the director's specific reasons for the denial.

The director's first basis for the denial focused on the fact that at the time of the filing of the petition, the petitioner had failed to demonstrate that the beneficiary was employed and would continue to be employed in a capacity that was primarily managerial or executive. The director noted that although the petitioner had submitted evidence showing that it had achieved a more complex organizational hierarchy *after* the petition's filing in response to the request for evidence, it had not demonstrated that such an organizational structure existed at the time the petition was filed. Consequently, the director concluded that this evidence, coupled with the description of the beneficiary's duties, was insufficient to establish that it will employ the beneficiary in a qualifying capacity. Similarly, the director also concluded that the evidence at the time of filing did not establish that the petitioner had been doing business for the previous year as required by the regulations.

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). The petitioner, however, does not address this main reason for the denial, and furthermore fails to specifically identify any reason(s) upon which it believes the director erred in reaching the decision. The petitioner merely states the current situation of the petitioner's business and requests approval of the petition.

The petitioner's general comments on appeal, without specifically identifying any errors on the part of the director, are 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)). 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.

The record shows a number of deficiencies, including the petitioner's failure to submit sufficient evidence establishing that it employed the staff required to support the beneficiary's managerial or executive position at the time the petition was filed. 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). In the instant case, the petitioner fails to acknowledge or address the director's reasons for the denial. Accordingly, the appeal will be summarily dismissed.

The regulation at 8 C.F.R. § 214.2(1)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

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.