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U.S. Citizenship
and Immigration
Services

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JUN 08 2005

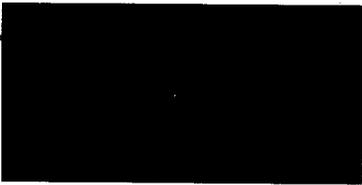


FILE: WAC 04 079 50449 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

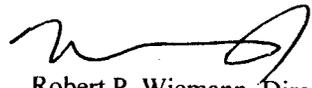
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the California Service Center for further consideration.

According to the record, the petitioner is a Nevada based business. The petitioner seeks to employ the beneficiary temporarily in the United States as its chief executive officer. The director determined that the record contained insufficient evidence to establish that the beneficiary would be employed in a, primarily, managerial or executive capacity.

On appeal, counsel disagrees with the director's decision and asserts that sufficient evidence has been submitted to establish that the beneficiary will be employed by the U.S. entity in a managerial or executive capacity.

In processing the appeal, the California Service Center forwarded a file with the appeal and a premium processing request for evidence; the file does not include the Form I-129 petition or the originally submitted evidence. The processing worksheet states: "Forward to AAO for processing, WAC receipt declared lost?" Upon review, there is insufficient documentation in the record of proceedings to allow the AAO to render a decision on appeal. Therefore, the matter will be remanded to the director to either match the appeal with the original record of proceeding or request a duplicate copy of the essential materials. The director may also request any additional evidence deemed necessary to assist with the determination. Upon reconstructing the record of proceeding, the director shall enter a new decision which shall be certified to the AAO in an expeditious manner if adverse to the petitioner. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The petition is remanded to the director for further consideration and a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.