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U.S. Citizenship
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FILE: SRC 02 038 55327 Office: TEXAS SERVICE CENTER

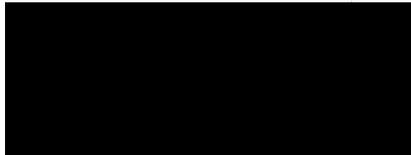
Date: JUN 14 2005

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. On appeal, the Administrative Appeals Office (AAO) affirmed the director's decision to deny the petition. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner, [REDACTED], endeavors to classify the beneficiary as a manager or executive pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims to be a wholly owned subsidiary of [REDACTED] located in Venezuela. It is engaged in the advertising and export business. It seeks to extend the petition's validity and the beneficiary's stay for three years as the U.S. entity's general manager. The petitioner was incorporated in the State of Florida in 1992 and claims to have three employees.

On March 11, 2002, the director determined that the beneficiary duties will not be primarily managerial. Consequently, the director denied the petition. The petitioner appealed the denial to the AAO. On January 10, 2003, the AAO affirmed the denial. In turn, the petitioner submitted a motion to reopen. The petitioner's letter in support of the motion asserts that the petitioner is "now operating in a fashion that requires the supervision, management, and managerial capacities of our [g]eneral [m]anager, [the beneficiary]." The petitioner submits its last three Forms 941 Employer's Quarterly Federal Tax Return, bank statements, and a list of the four employees currently working in the U.S. company.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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."

Counsel has not submitted any new evidence relevant to this proceeding. A review of the evidence submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. section 103.5(a)(2). The evidence dated prior to petitioner's appeal has been considered in the previous AAO decision or is evidence that was previously available and could have been discovered or presented in the previous proceeding. 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). Evidence pertaining to the petitioner and beneficiary's qualifications as of 2003 has no bearing in this proceeding.

Counsel does not indicate that this is a motion for reconsideration and the AAO observes that counsel has not stated any reasons for reconsideration of the AAO decision in this matter.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

Finally, it should be noted for the record that, unless Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. *See* 8 C.F.R. § 103.5(a)(1)(iv).

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, that burden has not been met.

ORDER: The motion is dismissed.