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FILE: EAC-03-172-53417 Office: VERMONT SERVICE CENTER Date: JUN 15 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:



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.

A handwritten signature in cursive script, appearing to read "Eric Halden".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 satellite television and broadband provider. It seeks to extend the employment of the beneficiary temporarily in the United States as its Director of Operations, 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, concluding that the petitioner failed to establish that the foreign entity is doing business, such that it is a qualifying organization.

On the Form I-290B appeal, counsel simply asserts: "We believe the decision reached in this case is incorrect as a matter of law." Counsel further states that a brief or evidence would be submitted to the AAO within 30 days. The appeal was filed on March 1, 2004. As of May 24, 2005, approximately 14 months after the date of filing, the AAO had received no further correspondence from counsel or the petitioner. On May 24, 2004, the AAO sent notification to counsel by facsimile that no further materials had been received in connection with the appeal, and affording counsel five business days to respond before a decision is rendered. On May 27, 2005, counsel submitted additional evidence.

In counsel's letter of May 25, 2005, he indicates that he is submitting a brief with the additional evidence. No brief is included. Therefore, counsel's assertions on appeal are limited to the vague sentence on Form I-290B, quoted above. Counsel fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel fails to mention any of the director's findings, or the ground for denial.

It is further noted that the majority of the evidence submitted by counsel on appeal relates to activity that occurred after May 19, 2003, the date the petition was filed. Such evidence includes banks statements, invoices, a lease, and a Form 10-QSB Quarterly Report. However, 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). As the majority of evidence submitted on appeal references business activity that occurred after the date of filing, it is not probative of the petitioner's eligibility as of the filing date. Accordingly, it is given no weight in this proceeding.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

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.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

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. The petitioner has not met this burden.

**ORDER:** The appeal is summarily dismissed.