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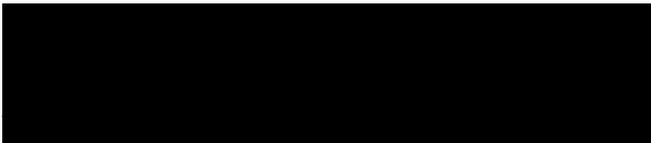
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File: WAC 01 287 57562 Office: CALIFORNIA SERVICE CENTER Date: MAY 11 2005

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)

IN 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

6

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to deny the petition. The matter is now before the AAO on motion to reopen. The motion will be granted. The previous decisions of the director and the AAO will be affirmed.

The petitioner is engaged in the importation of leather goods. It seeks to extend the employment of its chief executive officer. The director determined that the petitioner had not established that the beneficiary has been and will be primarily employed in a managerial or executive capacity. In addition, the director determined that the petitioner had failed to show that it had secured sufficient commercial space for the new business. The AAO affirmed these determinations on appeal.

On motion, counsel submits additional evidence to address the grounds of the director's denial and the findings of the AAO. Counsel for the petitioner does not state any reasons for reconsideration, nor does counsel furnish any new facts to be provided in the reopened proceeding.

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."

On motion, counsel for the petitioner has submitted (1) a commercial lease for a 1320 square foot premises; (2) evidence of the petitioner's hiring of a new employee; (3) copies of bank statements for portions of the year 2002; and (4) photographs of the petitioner's new showroom and warehouse. As argument, counsel merely states: "It is hoped that these additional exhibits of evidence will confirm the legitimacy of the petitioner's business, and the eligibility of the beneficiary, thereby enabling approval . . . ."

A review of the evidence that the petitioner submits on motion reveals new evidence not previously submitted. Consequently, counsel's submission meets the requirements for a motion to reopen.

The initial petition in this matter was filed on September 14, 2001, and the director's decision denying the petition was issued on May 31, 2002. The newly submitted evidence submitted by counsel on motion is unacceptable to establish eligibility in this matter. Specifically, the evidence submitted is as follows:

1. Commercial Lease Agreement signed on August 26, 2002, for the period beginning September 1, 2002 through September 30, 2003;
2. Evidence in the form of an Employment Eligibility Form (I-9) and an Employee's Withholding Allowance Certificate, both dated September 23, 2002, for [REDACTED] evidencing that the petitioner recently hired this individual as an additional employee;
3. Copies of Bank of America bank statements for the period from October 1, 2002 through November 30, 2002; and
4. Undated photographs of the petitioner's new business location, presumably at the location identified in the new lease agreement.

While this evidence was clearly not submitted previously, it cannot be considered as a basis for establishing eligibility in this matter. 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). Since the petition in this matter was filed on September 14, 2001, this evidence is not acceptable to establish eligibility in this matter.

WAC 01 287 57562

Page 3

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.

**ORDER:** The motion to reopen is granted. The previous decisions of the director and the AAO are affirmed.