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**U.S. Citizenship
and Immigration
Services**

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File: SRC 02 113 50822 Office: TEXAS SERVICE CENTER Date: JUL 06 2006

IN RE: Petitioner:
Beneficiary:



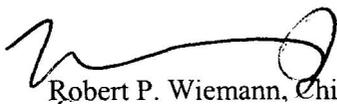
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner operates a retail and wholesale jewelry business. It seeks to extend its authorization to employ the beneficiary as its Executive/Director 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 had not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The AAO affirmed the director's decision and dismissed the petitioner's appeal in a decision dated May 17, 2004. The AAO also observed that the record contained insufficient evidence of a continuing qualifying relationship between the petitioner and the foreign entity.

Former counsel for the petitioner filed the instant motion to reopen on June 17, 2004. Former counsel indicated on Form I-290B that he would submit a brief and/or evidence to the AAO within 30 days. At the time the motion was filed, former counsel provided no statement on Form I-290B, nor did he submit a brief or evidence. Current counsel for the petitioner submitted a letter and supporting evidence to the AAO in support of the pending motion on November 22, 2005. The evidence includes the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, for the 2001 through 2004 year, a 2005 financial statement for the U.S. company, and a statement from the beneficiary. Counsel and the petitioner emphasize the growth achieved by the U.S. company from 2001 to the present.

The AAO notes that, although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Therefore, in this case, the petitioner's motion consists solely of a Form I-290B with no reason stated for the motion and no supporting brief or evidence. The brief and evidence submitted by new counsel approximately seventeen months following the AAO's decision need not and will not be considered.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

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

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

In the instant case, the petitioner's motion, as filed on June 17, 2004, does not contain any new facts and is unsupported by any pertinent precedent decisions to establish that the prior decisions were based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.