



U.S. Citizenship
and Immigration
Services

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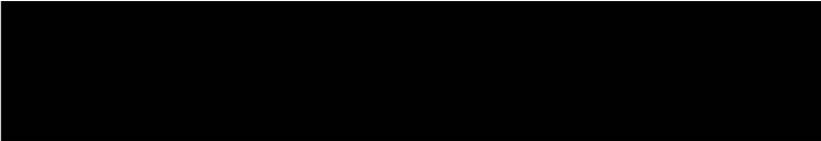
FILE: SRC 02 272 50694 Office: TEXAS SERVICE CENTER Date: JUN 02 2006

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. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen and/or reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

Counsel submitted a Form I-290B appeal in this matter on May 19, 2004, and indicated that he would forward a brief and/or additional evidence to the AAO within 30 days. On June 29, 2004, the appeal was summarily dismissed after review of the file showed that no brief or additional documentation had ever been received in this matter.

The matter is now again before the AAO in the form of a motion to reopen. In this motion, counsel for the petitioner asserts that the petitioner did in fact file a brief within the 30-day time period allotted by the regulations. Specifically, counsel indicates that a brief dated June 17, 2003 was actually submitted to the AAO via Federal Express on June 17, 2003. In support of this assertion, counsel provides a copy of a brief, a cover letter dated June 17, 2003, and a supporting affidavit attesting to this claim sworn by him in the presence of a notary public.

While the accompanying affidavit supports the motion to reopen in this matter, the fact remains that there is no documentary evidence that the petitioner's appeal brief was in fact filed with the AAO. Counsel clearly contends that the brief was mailed via Federal Express. The most acceptable form of documentary evidence to support counsel's claim would be the mailing receipt or tracking number showing the date and time this document was actually delivered to the AAO. Since it is a standard procedure of Federal Express to provide a tracking number and record of delivery, the fact that such documentation is not submitted raises questions with regard to the validity of counsel's claim. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Furthermore, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, even if a brief were timely submitted in this matter, the copy of the June 17, 2003 cover letter provided by counsel indicates that the brief was sent to the Texas Service Center and not to the AAO. Thus, contrary to the claims of counsel and the instructions on the I-290B, the evidence submitted on motion clearly indicates that the brief was not submitted to the AAO.

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 met that burden.

ORDER: The appeal is summarily dismissed.