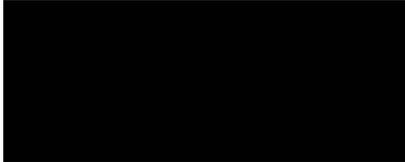


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File: SRC 05 172 51488 Office: TEXAS SERVICE CENTER Date: **NOV 30 2005**

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 appeal. The appeal will be rejected.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its manager as an L-1A nonimmigrant intracompany transferee 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 is a limited liability company organized under the laws of the State of Florida and is allegedly an import/export business.

The director denied the petition concluding that the petitioner did not establish that (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) the beneficiary had been employed abroad for at least one continuous year by the foreign entity within the three years preceding the filing of the petition. The director determined that, since the beneficiary was hired by the foreign entity on January 2, 2004, the fact that she has been continuously in the United States in B-2 visa status since December 7, 2004 results in the beneficiary's employment abroad for only 11 months.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the foreign entity provided a letter explaining that the beneficiary has been in the United States working for the foreign entity and elaborating on her managerial or executive duties.

Title 8 C.F.R. § 103.2(a)(7)(i) requires that Citizenship and Immigration Services (CIS) reject any petition or application filed with the incorrect filing fee. Likewise, 8 C.F.R. § 103.3(a)(2)(i) requires the affected party to file an appeal using Form I-290B. In this case, the petitioner filed an appeal using Form EOIR-29, Notice of Appeal to Board of Immigration Appeals from a Decision of an INS Officer,<sup>1</sup> and submitted the incorrect filing fee of \$110.00.<sup>2</sup> Therefore, the appeal will be rejected as improperly filed.

Moreover, even if the appeal were not being rejected for the reasons explained above, it would be summarily dismissed.

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

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<sup>1</sup>While counsel improperly filed the appeal using Form EOIR-29, it must be noted that the Board of Immigration Appeals does not have jurisdiction over this matter. See 8 C.F.R. § 1003.1(b). The AAO properly has jurisdiction over this matter. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

<sup>2</sup>The filing fee for an appeal to the AAO became \$385.00 on September 28, 2005. 70 Fed. Reg. 50957 (Aug. 29, 2005).

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 would have concurred with the director's decision and would have affirmed 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 the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal would have to be summarily dismissed. While the petitioner attempted to explain why the beneficiary was in the United States and what her function will be, it failed to provide any additional evidence for the AAO to consider or to identify any errors made by the director in this proceeding. While brief trips to the United States for business will not be interruptive of the beneficiary's one year of continuous employment abroad, such periods shall not be counted toward fulfillment of that requirement. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

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 rejected.