



U.S. Citizenship  
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FILE: WAC 03 083 51087 Office: CALIFORNIA SERVICE CENTER Date: OCT 12 2006

IN RE: Petitioner:  
Beneficiary:



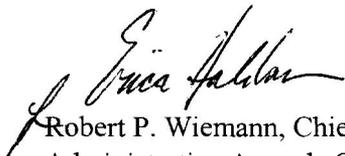
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California Service Center, denied the petition for a nonimmigrant visa. Counsel for the petitioner subsequently filed a motion to reopen and reconsider. The director granted the motion and affirmed the previous decision. Counsel subsequently filed an appeal with the Administrative Appeals Office (AAO), which the AAO dismissed. The matter is again before the AAO on motion to reconsider the AAO's previous decision. The AAO will dismiss the motion.

The petitioner filed the instant nonimmigrant petition seeking to extend the employment of its general 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 corporation organized under the laws of the State of California that is doing business as a construction company. The petitioner claims that it is the branch of the beneficiary's foreign employer, located in Homs, Syria. The beneficiary was granted an L-1A visa to open a new United States office. The petitioner seeks to employ the beneficiary as its general manager for an additional four years.

The director denied the petition concluding that the petitioner did not demonstrate that: (1) a qualifying relationship exists between the beneficiary's foreign employer and the petitioning organization; or (2) the beneficiary is employed by the United States entity in a primarily managerial or executive capacity.

In a motion to reopen and reconsider filed by the petitioner's current counsel on July 25, 2003, counsel claimed that the petitioner's former counsel filed inaccurate documents for the requested visa extension and did not provide proper evidence with regard to the beneficiary's employment capacity and the petitioner's relationship with the foreign entity. In a decision dated August 11, 2003, the director granted the motion and affirmed the previous decision. Counsel subsequently filed an appeal, which the AAO dismissed in a decision dated March 3, 2005. The AAO affirmed the findings of the director and further noted that the petitioner had not demonstrated that it had been doing business in the United States for the year previous to the filing of the extension petition.

Counsel filed the instant motion to reconsider on March 29, 2005. In his appended March 28, 2005 letter, counsel requested an extension until May 9, 2005 in which to submit a brief in support of the motion, noting that "additional time is necessary in order to permit [counsel] to attend to other matters with time limits aging out and to respond to the AAO's findings."

As of this date, counsel has not submitted any additional documentation. 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).

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."

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.

Counsel has not submitted any new evidence and has not stated any reasons for reconsideration of the AAO's decision in this matter. 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. The regulation at 8 C.F.R. § 103.5(a)(4) states "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, and the AAO's March 3, 2005 decision will not be disturbed.

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. Here, that burden has not been met.

**ORDER:** The motion is dismissed