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U.S. Citizenship
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DEC 04 2007

File: EAC 07 046 51978 Office: VERMONT SERVICE CENTER Date:

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:

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, Vermont 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 summarily dismissed.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its president to open a new office in the United States 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 New York and is allegedly in the cellular telephone accessory business. The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in a primarily executive or managerial capacity within one year of petition approval.

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, counsel to the petitioner states in the Form I-290B as follows:

Please be advised that the beneficiary of the instant I-129 petition is seeking L-1A Status. The I-129 petition has been assigned a case receipt number of [REDACTED] Copy of the same is attached herewith. The beneficiary's petition has been denied.

The Petitioner requires additional 30 days from the time of receipt of notice on I-290B to submit a Brief on the Appeal so that additional evidentiary proof can be submitted to attest the beneficiary's and the petitioner's eligibility.

As of the date of this decision, however, neither a brief nor additional evidence has been received and the record will be considered complete.¹

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 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 concurs with the director's decision and affirms the denial of the petition.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

¹On November 2, 2007, the AAO sent a fax to counsel to the petitioner requesting that he submit a brief and/or additional evidence, if these materials had previously been submitted, within five business days along with evidence of the date they were originally filed with Citizenship and Immigration Services. As of the date of this decision, neither counsel nor the petitioner has responded to this request.

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 must be summarily dismissed.

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 summarily dismissed.