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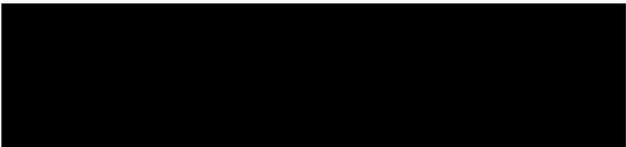
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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File: EAC 07 077 50383 Office: VERMONT SERVICE CENTER

Date: SEP 02 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 petitioner appealed the matter to the Administrative Appeals Office (AAO) where the appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its president and 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 limited liability company organized in the State of Texas and states that it operates as a gas station and convenience store. The beneficiary was previously granted L-1A classification to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for two additional years.

The director denied the petition based on the determination that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The petitioner's submissions on appeal included the beneficiary's job descriptions, a description of the petitioner's organizational hierarchy, and various relevant tax documents. Upon thorough analysis of these documents, the AAO concluded that the director's adverse findings were warranted and dismissed the appeal. The AAO explained that the overly broad description of the beneficiary's proposed position and the lack of evidence documenting a sufficient support staff at the time the Form I-129 was filed contributed to the determination regarding the petitioner's eligibility to extend the beneficiary's L-1A employment. The AAO cited precedent case law as well as statutory and regulatory provisions in support of its adverse conclusion.

On motion, counsel disputes the adverse determinations of the AAO and the director, restating the previously provided job description for the beneficiary and again asserting that the beneficiary's proposed employment would involve overseeing supervisory, professional, or managerial employees. Counsel makes this statement despite the AAO's prior finding that no evidence of employment or position descriptions for the beneficiary's claimed subordinates were found in the record of proceeding, and thus the claim that the beneficiary supervises managerial, supervisory or professional employees was unpersuasive.

The regulations at 8 C.F.R. § 103.5(a)(2) state, 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.

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

In the instant matter, counsel's motion is primarily supported by a restatement of information that was previously provided. Counsel has not introduced any new facts that were previously unavailable.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

With regard to the petitioner's motion to reconsider, the regulations at 8 C.F.R. § 103.5(a)(3) state, 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 CIS 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.

In the instant case, counsel does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal.

Accordingly, the petitioner's motion to reopen and reconsider will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.