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U.S. Citizenship
and Immigration
Services

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File: EAC 08 119 51748 Office: VERMONT SERVICE CENTER Date: **JAN 30 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 extend the employment of the beneficiary 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 allegedly engaged in the construction business.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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:

The Center Director comitted [sic] reversible error by denying the I129L [sic] application and finding that the beneficiary has not and will not be employed in a managerial or executive capacity within the petitioner's organization. See attached brief and evidence[.]

However, as neither a brief nor any additional evidence was attached to the Form I-290B, the AAO sent a facsimile to counsel on November 19, 2008 requesting that counsel submit a copy of the brief and additional evidence directly to the AAO within five business days along with evidence of the date the documents were originally filed.

In response, counsel sent a facsimile to the AAO on November 19, 2008 in which counsel asserts that the brief and evidence was submitted with the Form I-290B. Counsel explains as follows:

This I-290B was accompanied by very voluminous supporting documentation which was approximately 6 inches thick and weighed over 5 lbs. These documents were received by your office on June 19, 2008 along with the I-290B. I also attach herewith the "UPS" shipping documents, as well as evidence of receipt. Kindly review your records which will evidence and support same.

It is noted that counsel did not submit a copy of this "voluminous supporting documentation" in response to the November 19, 2008 facsimile request.

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:

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.

Upon review, the AAO notes that the record does not contain the brief or any of the additional evidence described by counsel in the Form I-290B and in his November 19, 2008 facsimile letter. Although counsel submits tracking documents and other materials pertaining to the shipment and receipt of the Form I-290B, these documents are not persuasive in establishing that the Vermont Service Center received anything other than the Form I-290B, a Form G-28, Forms I-94, and a copy of the director's underlying decision, which is what currently appears in the record. Finally, even if the AAO considered the shipping documents as persuasive in establishing that a six inch thick, five pound, appellate package was received by the Vermont Service Center, counsel failed to submit a copy of this package, or even a copy of the brief, to the AAO in response to the November 19, 2008 request. Accordingly, 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.