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U.S. Citizenship
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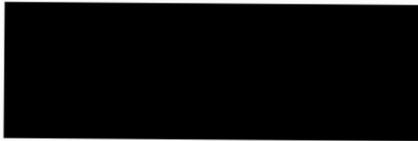
File: EAC 07 258 51026 Office: VERMONT SERVICE CENTER Date: JAN 30 2009

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 jewelry 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 on January 22, 2008. 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 that "additional documentations and explanations" would be submitted to the AAO within 30 days.

However, as no brief or additional evidence was ever received by the AAO, the AAO sent a facsimile to counsel on July 2, 2008. The facsimile requested that counsel send a copy of the brief and additional evidence to the AAO within five business days along with evidence of the date the materials were originally filed with the AAO.

On July 8, 2008, counsel faxed a copy of a six-page brief to the AAO. While this brief is dated February 10, 2008, counsel did not submit any evidence that this brief was submitted to the AAO prior to faxing it on July 8, 2008. Furthermore, as the brief refers twice to a U.S. Citizenship and Immigration Services (USCIS) decision dated April 8, 2008, it appears that this brief was prepared, in whole or in part, subsequent to February 10, 2008. Therefore, it does not appear as if this brief was sent to the AAO until after a facsimile was sent to counsel on July 2, 2008 noting its absence.

It is noted that the regulations at 8 C.F.R. § 103.3(a)(2)(vi) permit an affected party to file a brief with the Form I-290B. **The AAO may grant an affected party additional time to file a brief.** See 8 C.F.R. § 103.3(a)(2)(vii). Consistent with the discretion described in 8 C.F.R. § 103.3(a)(2)(vii), the Form I-290B extends to all appellants the option of submitting a brief and/or additional evidence directly to the AAO within 30 days. However, as is clear in the regulations, any extensions of time greater than 30 days require a showing of "good cause." In this matter, the record is devoid of evidence of "good cause" supporting the filing of a brief almost six months after the filing of the appeal, especially in light of counsel's apparent attempt to mislead the AAO on the date the brief was initially submitted. Accordingly, the AAO will not consider the brief faxed by counsel on July 8, 2008.

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.

In this matter, the Form I-290B fails to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. As the brief submitted on July 8, 2008 will not be considered by the AAO, 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.