



U.S. Department of Justice
Immigration and Naturalization Service



PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 99 207 51102

Office: VERMONT SERVICE CENTER

Date: JAN 15 2003

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

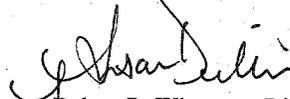
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Vermont Service Center. The director's decision was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be dismissed.

The petitioner is a corporation engaged in the sale of cut flowers and foliage. It seeks to employ the beneficiary as its office manager. Accordingly, it seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager.

The director determined the petitioner failed to establish the existence of a qualifying relationship between the petitioner and the foreign entity. The Associate Commissioner affirmed this determination on appeal.

Counsel submits a motion to reconsider or reopen noting that the petitioner also filed a petition for L-1A nonimmigrant classification (EAC 01 074 52450) for the beneficiary on October 26, 2000. Counsel notes that the Service on April 6, 2001 requested additional evidence to support the L-1A nonimmigrant classification, including evidence establishing a qualifying relationship between the petitioner and a foreign entity. Counsel has provided the petitioner's response to the request for evidence for the L-1A classification. Counsel also provided the approval notice for the L-1A nonimmigrant classification dated April 27, 2001.

Counsel asserts that based on the approval of the L-1A nonimmigrant classification, the director should make a *sua sponte* finding that this employment based immigrant petition be approved.

8 C.F.R. 103.5(a)(2) 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 indicates that the L-1A nonimmigrant petition was approved subsequent to the dismissal of the employment based immigrant petition. However the record reveals that the director approved the L-1A nonimmigrant petition on April 27, 2001. The dismissal of the appeal of the employment based immigrant petition was made on May 21, 2001. Counsel does not provide any precedent decisions establishing that the decision made by the Associate Commissioner on May 21, 2001 was based on an incorrect application of law or

Service policy. Further, contrary to counsel's assertion, the decision made by the Associate Commissioner on the issue of qualifying relationship and the reasoning for the dismissal was not available to the director when he made the decision on the L-1A nonimmigrant petition. Finally, the petitioner has not submitted any new evidence that establishes an individual or parent both owns and *controls* (emphasis added) the United States and foreign entities so that an affiliate relationship exists.

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. 8 C.F.R. 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

Furthermore, the director should review the L-1A nonimmigrant approved petition in light of the reasoning found in the Associate Commissioner's May 21, 2001 decision dismissing the petitioner's appeal and determine whether that approval should be subject to revocation pursuant to 8 C.F.R. 214.2(l)(9).

ORDER: The motion is dismissed.