U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

File: [redacted] Office: Vermont Service Center Date: JAN 18 2001

IN RE: Petitioner: [redacted]
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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. A subsequent motion to reopen and reconsider was granted, and the previous decision of the Associate Commissioner for Examinations was affirmed. The matter is again before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be dismissed.

The petitioner, an importer and exporter of garments, foodstuffs, and textiles, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its branch manager. The director determined that the petitioner had not established that the foreign entity had been doing business, that the intended U.S. operation, within one year of the approval of the petition, would support an executive or managerial position, or that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel argued that the foreign entity had been doing business, that the beneficiary had been and would be employed in a primarily executive or managerial capacity, and that the U.S. organization, within one year of the approval of the petition, would support an executive or managerial position.

The Associate Commissioner dismissed the appeal, reasoning that counsel had provided no evidence to demonstrate that the foreign entity was doing business, that the intended U.S. operation within one year of the approval of the petition, would support an executive or managerial position, or that the beneficiary had been or would be employed in the United States in a primarily managerial or executive capacity.

On motion, counsel contended that the petitioner submitted insufficient evidence to establish that the foreign entity was doing business as of the date the petition was filed, and that the lapse of two months evidence for 1998 should be "tolerated." Counsel further contended that the petitioner had submitted sufficient evidence to establish that the petitioner would support a managerial or executive position within one year of the approval of the petition, and that the beneficiary had been and would be employed in a primarily managerial or executive capacity.

The Associate Commissioner affirmed the director's decision reasoning that the evidence submitted by the petitioner had not demonstrated that the foreign entity had been doing business, that the petitioner would support a managerial or executive position within one year of the approval of the petition, or that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On second motion, the petitioner submits shipping documents, invoices, bank credit letters and other documents from 1999. The petitioner claims that the documents submitted on second motion establish that it is doing business. Further, the petitioner argues that because the documents were signed by the beneficiary,"this strongly demonstrate[s] that the beneficiary is [employed] in a[n] executive and managerial capacity." The petition was filed on March 4, 1998. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Accordingly, the documentation submitted on appeal does not establish that the foreign entity was doing business, nor does it otherwise relate to the beneficiary's eligibility as of the date the petition was filed. For this reason, the motion may not be granted.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, *supra* at 323 (citing INS v. Abudu, 485 U.S. at 107-108). A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, *supra* at 110.

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, that burden has not been met.

ORDER: The motion is dismissed.