



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



JAN 11 2002

File: WAC 99 027 51740 Office: CALIFORNIA SERVICE CENTER Date:

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:

SELF-REPRESENTED

PUBLIC COPY

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. Welmann, Director
Administrative Appeals Office

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

The petitioner engages in the business of distribution of garments manufactured in India. It seeks to employ the beneficiary temporarily in the United States as its chief executive officer. The director determined that the petitioner had not established that the beneficiary would primarily be employed in a qualifying managerial or executive capacity. The Associate Commissioner affirmed this determination on appeal.

On motion, the petitioner submits a statement referencing past submissions regarding the beneficiary's job duties. The petitioner does not submit any new documentation. The petitioner does not state any reasons for reconsideration, nor does the petitioner furnish any new facts in the reopened proceeding.

8 CFR 103.5(a)(2) states, in pertinent part: "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."

The petitioner contends that the director has erred in his conclusion that the beneficiary does not meet the definition of executive capacity and further, that there is no requirement that a chief operating officer in a small organization restrict his duties to executive or managerial tasks. A review of the statement the petitioner submits on motion reveals no fact that could be considered "new" under 8 CFR 103.5(a)(2).

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, 502 U.S. 314, 323 (1992) (citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Furthermore, 8 CFR 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.

The petitioner does not submit any document that would meet the requirements of a motion to reconsider. The petitioner does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. The petitioner's contention that a chief operating officer of a small company does not have to restrict his duties to those of an executive or managerial nature could be construed to be an argument that the previous decisions were based on an incorrect application of law. However, this contention has no merit.

Upon review of the applicable law, at section 101(a)(44) (A) and (B) of the Act, it is clear that the beneficiary of an L-1 classification must be primarily engaged in duties that are managerial or executive in nature. As previously noted by the Service decisions, the petitioner has not provided a comprehensive description of the beneficiary's duties and has not demonstrated that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title. Instead the record demonstrates that the beneficiary will be performing the operational tasks of the organization. The record as presently constituted does not contain evidence that the majority of the beneficiary's actual daily activities have been and will be managerial or executive in nature.

Finally, it should be noted for the record that, unless the Service directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 CFR 103.5(a)(1)(iv).

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 CFR 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.

ORDER: The motion is dismissed.