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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

FILE: LIN 98 189 51394 OFFICE: NEBRASKA SERVICE CENTER DATE: FEB 20 2003

IN RE: PETITIONER:
BENEFICIARY: [redacted]

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:

Self-represented

INSTRUCTIONS:

This is the decision 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the petitioner subsequently appealed the director's decision. The Administrative Appeals Office (AAO) summarily dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a Colorado corporation which claims to be engaged in the manufacture of plastic products. The petitioner further asserts that it is the affiliate of Karina, Ltd., a company located in Russia. The beneficiary is the sole employee of the petitioning company and serves as its president. The petitioner seeks to extend the beneficiary's classification as an L-1A 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).

On November 2, 2000, the director denied the petition after determining that the petitioner had not established that the beneficiary had been and would be employed in a primarily managerial or executive capacity. The director noted that the petitioner had not submitted sufficient evidence to establish that the beneficiary's duties constituted managerial control of a function, department, subdivision, or component of the organization. The director also observed that the record established that the beneficiary had been and would be primarily performing the ancillary, day-to-day operations necessary to maintain the petitioner's business, rather than primarily functioning in a managerial or executive capacity.

On appeal, the petitioner was not represented by counsel. In support of the appeal, the beneficiary submitted the following statement:

> I have been here for more than 3 years waiting for [a] decision to be made on my status. I couldn't leave [the] country for 3 years. My new attorney saying [sic] that the old attorney Kimberly A. Chandler did not file [the] right papers and didn't represent me right. I'm ready to do it myself, to show you how much money, desire, work were put into this business in [the] last 5 years.

The petitioner did not submit a brief or any additional evidence in support of the appeal. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the motion

reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

On May 14, 2002, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v) as the petitioner had failed to specifically identify any erroneous conclusion of law or statement of fact in the director's decision.

The petitioner filed a motion to reopen and reconsider on June 18, 2002. On motion, the petitioner was represented by new counsel, Ms. Laura Lichter of Lichter & Associates, P.C., in Boulder, Colorado. Counsel for the petitioner submitted a letter stating that a brief in support of the motion would be submitted within thirty days. On July 16, 2002, counsel filed a request for an extension with the Nebraska Service Center, requesting additional time to submit documents detailing the arguments and evidence that were claimed to have been previously submitted on appeal. On August 15, 2002, counsel forwarded the request for an extension to the AAO. On November 7, 2002, approximately five months after filing the motion on behalf of the petitioner, counsel filed a notice of withdrawal as the attorney of record.

As of this date, the AAO has not received a brief or any additional evidence in support of the motion. Prior to her withdrawal, counsel for the petitioner did not state any reasons for reconsideration, nor did counsel furnish any new facts to be provided in the reopened proceeding.

The regulation at 8 C.F.R. § 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." Furthermore, 8 C.F.R. § 103.5(a)(3) states that a motion to reconsider must declare 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 policy.

Neither the petitioner nor petitioner's prior counsel has stated any new facts that would be provided in the reopened proceeding, nor have they submitted affidavits or other documentary evidence in support of the motion. Furthermore, neither has established that the prior decision was based on an incorrect application of law or policy. Accordingly, the petitioner has not met the applicable requirements for a motion to reopen or a motion to reconsider.

The regulations mandate that "[a] motion that does not meet applicable requirements shall be dismissed." 8 C.F.R. § 103.5(a)(4). Accordingly, the motion will be dismissed, the

proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

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.

ORDER: The motion is dismissed.