U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC 01 169 50517 Office: CALIFORNIA SERVICE CENTER Date: JAN 08 2003

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myron L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner is a mining and mineral exploration company that seeks to continue to employ the beneficiary as its president and chief executive officer for an additional period of three years. The director determined the petitioner had failed to respond to a Service request for additional evidence dated March 28, 2001. The director then determined the petitioner had failed to establish the existence of a qualifying relationship between the petitioning corporation and a qualifying foreign entity. The director also determined that the petitioner had not established that the firm is actually doing business and that beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the petitioner submits copies of receipts showing that the Service received the evidence requested by the director's March 28, 2001 letter on August 24, 2001.

Review of the record establishes that the evidence claimed to have been forwarded by the petitioner was a matter of record but not considered when the director issued his determination on October 20, 2001.

Inasmuch as it appears that the beneficiary's eligibility for L-1 classification was not properly considered, this case will be remanded for the director to again review the record for a determination as whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee. For example, whether there is an existing qualifying relationship between the U.S. and foreign entities, the petitioner is doing business, and beneficiary will be employed in a primarily managerial or executive capacity. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of October 20, 2001 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.