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FILE: SRC 04 095 51241 Office: TEXAS SERVICE CENTER Date: **JUN 01 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

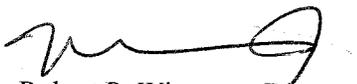
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it is a carpets and garments retailer. It seeks to employ the beneficiary temporarily in the United States as its president, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director denied the petition, concluding that the petitioner has failed to establish that it has a qualifying relationship with the foreign entity. The director observed that the petitioner has failed to submit evidence of ownership and control of the U.S. and foreign entities, despite the director's request for such evidence.

On the Form I-290B appeal, counsel did not state any reason for the appeal. Counsel submitted additional evidence, but no brief. The additional evidence includes: (1) a copy of a share certificate for 1000 shares of the U.S. entity, owned by the beneficiary; (2) a certificate attesting that the beneficiary is the managing director of the foreign entity, (3) a list of the partners of the foreign entity, (4) an affidavit attesting that the beneficiary is a 25% shareholder in the petitioner's affiliate in India, and (5) a copy of the deed of partnership of the Indian affiliate.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. With respect to the additional evidence submitted on appeal, the AAO notes the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Furthermore, the regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

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. The petitioner has not met this burden.

**ORDER:** The appeal is summarily dismissed.