

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DA



FILE: WAC 03 220 50323 Office: CALIFORNIA SERVICE CENTER Date: MAY 09 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, California 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant 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). The petitioner is a Delaware corporation that is engaged in the manufacture and distribution of dental restoration products. The petitioner claims that it is the parent company of Prodent [REDACTED] Inc. located in Makati City, Philippines. The petitioner seeks to employ the beneficiary as its business development manager for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that it appeared the beneficiary would be performing sales and marketing, purchasing and distribution administration rather than performing primarily managerial or executive duties.

On appeal, counsel for the petitioner does not object to the denial of the petition, nor does he specify any erroneous conclusions of law or statements of fact on the part of the director. Instead, he asserts that the director based his decision to deny the petition "on inaccurate and incorrect information inadvertently provided" by petitioner's former counsel in a letter dated November 20, 2003, which was submitted in response to the director's October 11, 2003 request for evidence.

Specifically, counsel states:

Evidently, the Service considered the previous counsel's letter dated November 20, 2003 in reaching its decision. Unfortunately, that letter was made available to the petitioner only when it received the Service's decision. Thusly, it was just recently learned by the petitioner that the proffered position was highly misrepresented and an inaccurate description of its duties was provided to the Service. Apparently, the prior counsel prepared and submitted a response to the Service without consulting with the petitioner or clarifying details of the position. Had the petitioner known that certain crucial information were misinterpreted to the Service, it would have acted swiftly to correct whatever deficiencies are found.

In support of the appeal, counsel submits an affidavit executed by the petitioner's vice president of operations, stating that he disagrees with contents of former counsel's November 20, 2003 letter, and that he was never consulted by former counsel in regard to the complete list of duties of the business development manager position offered to the beneficiary. The petitioner further states:

[The] position of [REDACTED] is of managerial capacity and as such, [the beneficiary] will be required to supervise several staff members including marketing, quality control, shipping/receiving and network/IT support. More specifically, because of [the beneficiary's] business management background, she will be required to partake in a wide array of responsibilities to be carried out on our behalf. This will include over-seeing the entire daily business operation where she will insure that proper authority limits and internal

control/procedures are observed; rendering all personnel-related decisions subject to executive review, including hiring, firing, endorsing disciplinary measures and all promotional-related aspects; reviewing all reports pertaining to this company's day-to-day activity; and other related tasks affecting the over-all viability as to our related activities[.]

It is noted for the record that 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 appeal or 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). Although counsel claims that that the petitioner's previous counsel misrepresented critical information in response to the director's request for evidence, counsel has not satisfied the three requirements set forth above.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The director issued a request for evidence on October 11, 2003, in part instructing the petitioner to submit a comprehensive description of the beneficiary's duties; the percentage of time spent on each duty; and a description of the types of non-managerial functions for which the beneficiary will be responsible. Former counsel for the petitioner submitted a response dated November 20, 2003, which included a very detailed description of the beneficiary's duties. The petitioner now claims that this description was wholly inaccurate and a "severe misrepresentation" of the duties to be performed by the beneficiary; however, on review, it appears to merely expand upon the initial job description included in the petitioner's own letter of July 7, 2003. Yet, the petitioner now wishes the AAO to disregard its former counsel's letter of November 20, 2003, and instead consider the job description included in the petitioner's affidavit, as quoted above, which bears little resemblance to the job description submitted by the petitioner in support of the initial petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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 the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal will 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.