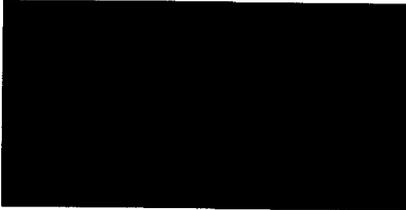




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



DA

FILE: WAC 03 072 53557 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2005

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

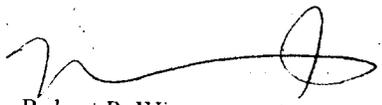
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 extend its authorization to employ its president and general manager 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 California corporation that is engaged in the provision of travel services. The petitioner claims that it is the subsidiary of [REDACTED] located in Ahmedabad, India. The beneficiary was initially granted a one-year period in L-1A classification in order to open a new office in the United States, and the petitioner now seeks to employ him for an additional two-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. The director observed that the petitioner's job description indicates that the beneficiary will be involved in the day-to-day duties of operating a travel agency including those of a sales agent rather than directing activities through managers, executives or professionals. Although the director treated the instant petition as a "new office" petition pursuant to 8 C.F.R. § 214.2(l)(3)(v), he observed that the beneficiary had been in the United States from May 2002 to November 2002 to establish the business. The director concluded that the fact that the beneficiary was unable to start the business or at least make appropriate arrangements to do so indicates that the petitioner's proposed business plan is not feasible.

On appeal, the petitioner does not specify any erroneous conclusions of law or statements of fact on the part of the director. Instead, the petitioner submits a December 2, 2003 letter from the petitioner's vice-president, in which he states:

- A. Regarding physical premises we have lease for 3 years and it is further renewable.
- B. Beneficiary has been employed as a President and General Manager. So it is all ready a[n] executive or managerial authority over the new operation.
- C. Beneficiary... is a[n] Owner and General Manager of the Business in back home and also he is employed here as President and General Manager in executive capacity having authority to make all major decision for the company like establishes the goal and policies of the organization, having power to hire and fire employee, decision for marketing and sales, controlling income and expenditure, in short he is only a decision making person for the business. Also beneficiary is a major stockholder for the business U.S.A. and his sole owner in the business at back home. Also he is only a person having 15 years experience as an executive capacity to run the business in U.S.A. as a sole executive capacity. This is very clear from our first original petition as well as renewal request.

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.

Although the director's decision to deny the petition will be affirmed, the AAO notes that the director inappropriately treated this petition as a "new office" petition under 8 C.F.R. § 214.2(l)(3)(v) rather than as an extension of a new office petition pursuant to 8 C.F.R. § 214.2(l)(14)(ii). The beneficiary's previous L-1A petition was approved for a one-year period from January 5, 2002 to January 5, 2003 (WAC 01 222 51682). At the time of filing the petition on January 2, 2003, the petitioner clearly represented this petition as a renewal, even while acknowledging that the beneficiary had been in the United States for only seven months out of the year and had not been able to commence doing business. This circumstance does not negate the fact that the beneficiary was approved for a one-year period. The regulations clearly state that a new office petition "may be approved for a period not to exceed one year," irrespective of the length of time the beneficiary actually spends in the United States. 8 C.F.R. § 214.2(l)(7)(i)(A)(3). The fact that the beneficiary did not enter the United States until four months after he was approved for L-1A status and departed the United States before his petition expired does not render him eligible for additional time in order to open a new office. In addition, Citizenship and Immigration Services (CIS) records show that the petitioner previously obtained approval of a new office petition for this beneficiary valid from October 12, 2000 to October 12, 2001 (WAC 00 255 53635). Thus, the petitioner and beneficiary have already been granted two opportunities to begin doing business in the United States and have failed to progress beyond the market research stage.

Although not addressed by the director, the petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied several of the enumerated evidentiary requirements. The petitioner has conceded that the United States entity has not been doing business for the previous year as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner has not submitted a detailed statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition so that the AAO can determine whether the beneficiary is employed in a primarily managerial or executive capacity. Rather, when instructed in a request for evidence to provide a detailed description of the beneficiary's managerial duties and purpose for coming to the United States, the petitioner simply indicated this information was not available. The petitioner has conceded that its new operation has not been staffed. Finally, the petitioner has conceded that it cannot provide evidence of the financial status of the United States company because it is not yet operational. For all of these reasons, the petition may not be approved and the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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.

The AAO acknowledges that the petitioner briefly addresses the beneficiary's purported executive duties on appeal by paraphrasing elements of the statutory definitions of managerial and executive capacity. *See* section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44). However, the petitioner does not explain how the beneficiary has been performing executive duties for a company that has not yet been established. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.