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FILE: EAC 04 132 54267 Office: VERMONT SERVICE CENTER Date: SEP 21 2005

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

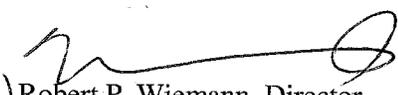
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Vermont 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 engaged in import and distribution of Indian snacks. It seeks to extend the beneficiary's employment in the United State as its vice 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 did not establish that the proposed position with the United States entity is managerial or executive in nature.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B appeal, counsel asserts:

Petitioner contends that L-1 application to extend should have been approved based upon evidence submitted. Based upon the attached evidence, Petitioner respectfully requests that the extension be granted.

Counsel does not submit a brief in support of the appeal. The petitioner, through counsel, submits copies of all documents previously entered into the record.

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. The director's April 26, 2004 decision includes a thorough analysis of the evidence presented with the initial petition and in response to an April 5, 2004 request for evidence, and specifically discussed the deficiencies and inconsistencies among the documents and information submitted. Counsel's general objection to the denial of the petition, without specifically identifying any errors on the part of the director, is simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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).

Contrary to counsel's assertions, the evidence previously submitted does not establish the beneficiary's eligibility for the benefit sought, particularly in light of the director's detailed list of reasons for denying the petition. Rather, the record shows a number of inconsistencies with respect to the petitioner's staffing levels and the actual job duties of its employees. 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). In the instant case, counsel fails to acknowledge, much less resolve, the inconsistencies discussed in the denial.

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.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.