

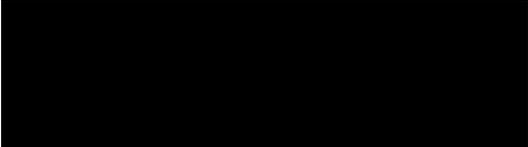


U.S. Citizenship  
and Immigration  
Services

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File: WAC 04 088 50943 Office: CALIFORNIA SERVICE CENTER Date: ~~JAN~~ 27 2006

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)

IN 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 extend the employment of its president 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 was incorporated on December 27, 2002 under the laws of the State of California and claims to be engaged in international trade. The petitioner claims to be a subsidiary [REDACTED] Co., Ltd., located in Zhengzhou, China. The beneficiary was previously granted L-1A status for a one-year period, from March 12, 2003 to March 12, 2004, in order to open a “new office” in the United States. The petitioner now seeks to extend the beneficiary’s stay for one additional year.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity.

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 appeal, counsel states: “The only issue in this motion is whether the beneficiary will be working in a managerial position for the petitioner.” In the appellate brief, counsel cites unpublished AAO decisions in support of his assertion that the beneficiary will be employed in a qualifying capacity with the petitioning company in the United States. Counsel does not, however, address the beneficiary’s employment in a qualifying capacity with the foreign entity, the sole grounds for denial entered in the director’s September 10, 2004 notice of decision.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary’s application for admission into the United States. In addition, 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. Counsel’s arguments against the denial of the petition on completely different grounds than those actually identified by the director, and without specifically identifying any errors on the part of the director, are 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)). Accordingly, the petitioner has not submitted evidence on appeal to overcome the director’s determination that the beneficiary was not employed abroad in a qualifying managerial or executive capacity.

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.

Beyond the decision of 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 an extension of a petition that involved a "new office." Upon review, the petitioner has not satisfied several of the enumerated evidentiary requirements. The petitioner has not submitted evidence that the United States entity has 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. The petitioner has not submitted a statement describing the staffing of the new operation. Finally, the petitioner has not submitted evidence of the financial status of the United States operation. For all of these reasons, the petition may not be approved.

The AAO acknowledges that the petitioner failed to provide many documents requested in the director's request for evidence, including evidence regarding its staffing levels, organizational structure and business activities, because it apparently deemed the United States company eligible to be treated as a "new office" for one additional year. In a January 14, 2004 letter submitted in support of the petition, and again in a July 21, 2004 letter submitted in support of the response to the request for evidence, counsel for the petitioner indicated that the beneficiary was forced to postpone business operations in the United States and thus the petitioner had been doing business for less than one year. Counsel requested that the petitioner be treated as a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

Despite counsel assertions that the beneficiary was unable to commence doing business upon approval of the initial petition, the petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. By allowing multiple petitions under the more lenient "new office" standard, CIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R.

§ 214.2(l)(14)(ii). The petitioner in this matter has not established that it is eligible for an extension of its "new office" petition.

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).

Finally, the AAO notes that a search of the California Department of State's Internet Business Portal (<http://kepler.ss.ca.gov/corpdata>) shows the petitioner's corporate status as "dissolved" as of this date. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). As it is assumed that any dissolution occurred subsequent to the filing of the instant appeal, the AAO notes the deficiency for the record and will not discuss this issue further.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met.

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