

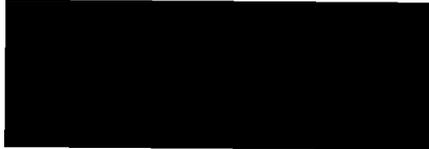
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U.S. Citizenship  
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FILE: EAC 03 137 52257 Office: VERMONT SERVICE CENTER

Date: JUL 11

IN RE: Petitioner:  
Beneficiary:



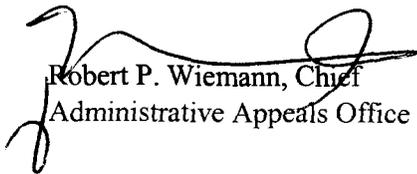
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief  
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 operates as a courier service and money remitter. It seeks to employ the beneficiary temporarily in the United States as its general manager as a 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 director denied the petition on October 6, 2003, concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a managerial or executive capacity; or (2) that the beneficiary was employed in a primarily managerial or executive capacity with the foreign entity for one full year within the three years prior to entering the United States as a nonimmigrant.

The petitioner subsequently filed an appeal on November 6, 2003. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B Notice of Appeal, counsel for the petitioner asserts: "The service erred in finding that the beneficiary does not qualify for classification under section 101(a)(15)(L) of the Immigration and Naturalization [sic] Act."

Counsel indicated on Form I-290B that she would submit a brief and/or evidence to the AAO within 60 days, and explained that the additional time was needed in order to obtain "original evidentiary documentation" from Ecuador which would require translation. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on May 4, 2006 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. To date, counsel has not responded to the AAO's request. Accordingly, the record will be considered complete.

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. Counsel's general objections to the denial of the petition, 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).

As noted by the director, the petitioner failed to provide a comprehensive description of the beneficiary's proposed role as general manager of the petitioner's four-person company. In a May 6, 2003 request for evidence, the director specifically requested that the petitioner submit a breakdown of the number of hours the beneficiary will devote to each of his proposed job duties on a weekly basis and an organizational chart for

the U.S. entity. In response, the petitioner indicated that the beneficiary would serve as “a member of the Board of Representatives” and claimed to already employ another individual in the offered position of “general manager.” 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).

Further, the petitioner’s response to the director’s request for evidence did not describe duties to be performed by the beneficiary in a managerial or executive capacity. The petitioner stated that the beneficiary would devote two to three hours per day to picking up bank deposits from the petitioner’s two locations and taking them to the bank; two to three hours “scouting new locations for offices and marketing opportunities”; and two to three hours “making contacts at banks.” Without further explanation, it appears the beneficiary will be primarily performing the non-managerial day-to-day operations of the company. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 604 (Comm. 1988). Counsel’s brief statement on the Form I-290B fails to acknowledge, much less resolve the deficiencies discussed in the denial.

With respect to the beneficiary’s employment with the foreign entity, the petitioner was specifically instructed to provide evidence that the beneficiary had one continuous year of full-time employment within the previous three years. The beneficiary entered the United States as a nonimmigrant on January 4, 2003. The petitioner provided the foreign entity’s payroll statements for the months of March and April 2001 only, evidencing the payment of wages to the beneficiary as a “manager” during those months. The petitioner did not submit documentary evidence to establish that the beneficiary had completed a full year of qualifying employment with the foreign entity. 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).

Beyond the decision of the director, the petitioner did not submit sufficient evidence to establish that the U.S. company and foreign entity have a qualifying relationship, as required by 8 C.F.R. § 214.2(1)(3)(i). The petitioner stated on Form I-129 that the U.S. entity is a subsidiary of the foreign entity and indicated the ownership of each entity as follows: “[the foreign entity] – 50% of corporation stock in Ecuador”; [the petitioner] – 50% of corporation stock in U.S.A.” The petitioner submitted an “Actualization Form” for the foreign entity which indicates that the company is owned by six individuals, with [REDACTED] as the majority shareholder with 60 percent of the company’s stock.

The petitioner submitted insufficient evidence regarding the U.S. company’s ownership. There is no evidence that the foreign entity owns the U.S. company, and therefore the petitioner has not substantiated its claim that the entities have a parent-subsidary relationship. The petitioner submitted copies of its stock certificates numbers three through five indicating ownership of its 100 authorized shares as follows: (1) [REDACTED]; [REDACTED] – 25 shares (stock certificates number 3); (2) [REDACTED] - 51 shares (stock certificates

number 4); and (3) [REDACTED] – 24 shares (stock certificate number 5). All of the submitted stock certificates were issued on February 21, 2003. The petitioner did not provide a copy of its stock certificates numbers one and two, or its stock transfer ledger, which would show the total number of shares issued, to whom they were issued, and whether any stock certificates were transferred and/or canceled. 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)). Based on the limited evidence submitted, it appears that the majority shareholder of the U.S. company is [REDACTED] and the majority shareholder of the foreign entity is [REDACTED]. The evidence does not support a determination that the U.S. entity and the foreign entity are affiliates based on common ownership and control. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). For this additional reason, the petition will not be approved.

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.

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.