U.S. Department of Homeland Security
20 Massachusetts Ave. N.W, Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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[redacted]

File: SRC-02-198-54437 Office: TEXAS SERVICE CENTER Date: AUG 15 2005

IN RE: Petitioner:
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:

[redacted]

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 nonimmigrant petition was initially approved by the Director, Texas Service Center. Upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of intent to revoke the approval of the petition, and his reasons therefore. The petitioner submitted a response to the director, and the director subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as its President and CEO 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 corporation organized in the state of New York that claims that it offers computer consulting services. The petitioner indicates that it is an affiliate of VTech, Inc., located in Ahmedabad, India. The director approved the nonimmigrant petition on June 26, 2002.

Based on further review of the record and communication with the U.S. Consulate in Mumbai, India, the director issued a notice of intent to revoke the approval on December 18, 2003. The director stated the following:

> Beneficiary appeared for an interview with only copies of his educational credentials stating they were lost in an earthquake, however the originals were contained in a packet he had filed to request a B1/B2 visa in 2001, said request was denied for materially misrepresenting facts. The proposed place of employment appeared to be a home residence. The beneficiary also presented what appeared to be an altered passport. At the interview the beneficiary showed absolutely no knowledge of the skills set required in the proposed position.

In response, counsel for the petitioner submitted a letter dated January 16, 2004. Counsel asserted that the U.S. Consulate mischaracterized facts surrounding the beneficiary's visa application. Specifically, counsel stated that the beneficiary previously applied for an H-1B visa, not a B-1/B-2 visa as claimed Citizenship and Immigration Services (CIS.) Counsel asserted that the beneficiary's H-1B visa was rescinded due to an anonymous letter that called into question the beneficiary's educational credentials. Counsel states that the beneficiary then submitted "a voluminous amount of evidence to support his degree, i.e. a letter from the College, fee receipts, [and an] ID card." Yet counsel indicates that the U.S. Consulate "never acted on this irrefutable evidence; therefore, the record wrongfully reflects that [the beneficiary] submitted fraudulent educational documents."

Counsel further asserted that the beneficiary did not claim that his original documents were lost in an earthquake. Counsel stated that "[i]t is our belief that the Consular Officer has [the beneficiary's] case confused with that of another applicant's case, this being the only explanation that makes sense." Counsel confirmed that the beneficiary would be working out of a private residence, and stated that "[t]here is nothing in the regulations that specifically states that an office cannot be located in a private residence." Counsel asserted that the beneficiary did not present an altered passport, and that such allegations are "completely false." Counsel stated that the U.S. Consular Officer did not ask the beneficiary questions relating to the skills required for his position in the United States, and thus the allegation that he showed no knowledge of the required skills is unfounded.

On February 2, 2004, the director revoked the approval of the petition. The director stated that "[t]he response to the intent to revoke contains a letter [from] the attorney of record stating it appears that the consulate has confused the beneficiary with another applicant because the facts stated are not true. No evidence was submitted to support this claim."

On appeal, counsel submits a brief in which he restates, largely verbatim, the assertions made in response to the director's notice of intent to revoke. Counsel emphasizes that the director erroneously referenced a B-1/B-2 visa application made by the beneficiary, and asserts that this "calls into question the accuracy of the entire investigation." Counsel confirms that he was not present at the beneficiary's interview at the U.S. Consulate in Mumbai. Counsel asserts that "the apparent contradictions between our client's account and the Consulate's account should not be disregarded. In all, we note that [CIS] has based their whole case on supposed statements made by the Beneficiary in a consular interview, not on actual documentary evidence."

Upon review, counsel's assertions are not persuasive. Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). In the present matter, the director provided a statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation.[1] Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(4): "The statement of facts contained in the petition was not true and correct."

As noted by counsel, the director stated that the beneficiary previously applied for a B-1/B-2 visa, which was rescinded due to a finding that the beneficiary materially misrepresented facts. Counsel asserts that the U.S. Consulate must have erroneously attributed the facts of a separate beneficiary and proceeding to the present matter, as the instant beneficiary has not applied for a B-1/B-2 visa. However, it is evident that the U.S. Consulate's and director's error was limited to referring to the petitioner's prior H-1B visa application as an application for a B-1/B-2 visa. The director correctly cited significant facts regarding the prior application, including the facts that the visa was rescinded due to misrepresentation, and that the beneficiary's original educational credentials were contained in the relevant file. Whether the prior application was for an H-1B visa or a B-1/B-2 visa is not material to the present matter. The veracity of the beneficiary's statements regarding his education and documentation is the issue that prompted the director to reference the prior visa application, and facts related to this issue were recited correctly. Thus, the director's misnaming of the visa class in question did not prejudice the petitioner or the beneficiary. The U.S. Consulate's and director's error was clerical in nature, and, contrary to counsel's assertion, it does not "[call] into question the accuracy of the entire investigation."

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[1] The director referenced the regulations at 8 C.F.R. § 214.2(h)(11) in both the notice of intent to revoke and the notice of revocation. The regulations at 8 C.F.R. § 214.2(h)(11) pertain to the revocation of H-1B petitions. As discussed above, the regulations at 8 C.F.R. § 214.2(l)(9)(iii) govern the revocation of L-1A petitions.

The veracity of the petitioner's representations regarding the beneficiary's prior education and experience has been called into question. Specifically, when asked for original documentation of his educational credentials, the beneficiary reported to the U.S. Consulate that his documents were destroyed in an earthquake. In fact, the original documents were contained in a file of documents in connection with the beneficiary's denied H-1B visa application, and thus the U.S. Consulate determined that the beneficiary provided false information. The only documentation that the petitioner submits to rebut this finding consists of a brief from counsel in which counsel merely asserts that the beneficiary did not claim his documents were lost in an earthquake. Counsel's own brief confirms that he was not present at the beneficiary's L-1A visa interview. Counsel fails to specify on what he bases his claim that the beneficiary did not make such a statement, and thus it is assumed that he relies solely on the beneficiary's verbal account of the visa interview. As the beneficiary's credibility is at issue, the repetition of statements made by the beneficiary does not serve as reliable evidence in these proceedings. The petitioner offers no independent evidence to support the appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

The purpose of this proceeding is not to evaluate whether prior findings that the beneficiary engaged in misrepresentation are sound. Yet, comments that counsel makes regarding the beneficiary's prior H-1B visa application suggest that documentary evidence is available to support the present appeal. For example, counsel refutes the U.S. Consulate's prior finding that the beneficiary misrepresented information regarding his educational credentials in connection with an H-1B visa application. Counsel states that the beneficiary rebutted the Consulate's finding with "a voluminous amount of evidence to support his degree, i.e. a letter from the College, fee receipts, [and an] ID card." However, the petitioner fails to submit any such documentation that would support that the beneficiary's education has been accurately represented in the present petition. It is noted that the director's revocation rested primarily on the fact that the petitioner failed to submit evidence in response to the notice of intent to revoke. On appeal, again the petitioner fails to provide evidence. 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)).

Counsel asserts that the beneficiary did not present an altered passport, and that such allegations are "completely false." Counsel fails to indicate whether he personally examined the beneficiary's passport in order to form his conclusion, or whether he relied on verbal representations made by the beneficiary. The petitioner fails to submit a copy of the beneficiary's passport or any documentary evidence to support that the passport has not been altered. Again, 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. at 165.

Counsel confirms that the beneficiary would be working out of a private residence, and correctly states that "[t]here is nothing in the regulations that specifically states that an office cannot be located in a private residence." The fact that the beneficiary would work out of a private residence does not, by itself, render him ineligible for L-1A status. However, the petitioner's physical premises are a relevant consideration, as the petitioner must initially establish that it has acquired sufficientphysical premises in order to house its

operations and employ the beneficiary in a primarily managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(v). The fact that the beneficiary would work out of his home, considered together with other evidence of the petitioner's business activity, would reasonably raise questions regarding the adequacy of the petitioner's physical premises and whether the petitioner is sufficiently operational. On the nonimmigrant petition, the petitioner claims 12 employees. CIS records further reveal that the petitioner has filed a total of 71 nonimmigrant petitions in the previous five years. On appeal, the petitioner claims that it maintains an office in New Rochelle, New York, thereby raising questions as to how the beneficiary, as president and CEO, will manage the operations from his home in Atlanta, Georgia. Despite the claim of the New Rochelle office, no evidence was submitted in support of the claim. The failure of the petitioner to submit evidence on appeal does not overcome the findings of the director. 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. at 165. The director's finding in this regard will be affirmed.

Counsel states that the U.S. Consulate did not ask the beneficiary questions relating to the skills required for his position in the United States, and thus the allegation that he showed no knowledge of the required skills is unfounded. In examining the evidence of record, it is apparent that the director misread a comment made by the U.S. Consulate. The U.S. Consulate did not assert that the beneficiary exhibited no knowledge of the skills required for the prospective position. Accordingly, the director's comment in this regard will be withdrawn.

Based on the foregoing, the petitioner fails to overcome the director's and U.S. Consulate's findings that the beneficiary altered his passport and engaged in misrepresentation. It is noted that doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The fact that the beneficiary made misrepresentations regarding his educational documentation calls into question the veracity of representations made in the present petition regarding his qualifications and past experience. The beneficiary's past education and experience are necessary considerations in determining whether he is eligible for L-1A classification. *See* 8 C.F.R. § 214.2(l)(3)(iii) and (iv). The petitioner has failed to establish that the documentation and explanation contained in the record of proceeding are reliable. For this reason, the appeal will be dismissed.

The petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER**: The appeal is dismissed.