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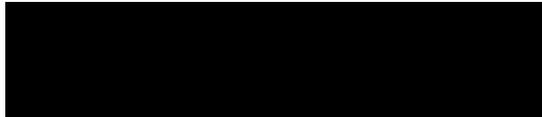
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FEB 17 2009



FILE: WAC 03 224 50009 Office: CALIFORNIA SERVICE CENTER Date:

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:

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, a company incorporated in the State of California, states that it is engaged in the business of importing and exporting typical natural Peruvian and U.S. products. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).¹

The director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary has been and will continue to be employed in a managerial or executive capacity. Specifically, the director noted that the description of the beneficiary's duties indicates that he will be responsible for daily supervision of the administrative assistant, the only other employee of the U.S. company, as well as purchasing, sales, marketing and acting generally as an agent for the company. On that basis, the director concluded that the beneficiary would be functioning more as the office's main representative and agent, thus an import/export agent, rather than an executive or manager. Moreover, the director found, it is evident that the beneficiary will be involved with all the day-to-day duties of the business, rather than directing activities through executive or managers, or other professionals.

On the Form I-290B appeal, the petitioner simply asserts: "The Service erred in its decision denying the above referenced matter. Please see attached addendum and supporting documentation." On the addendum, the petitioner did not point to any specific error in the director's decision. Instead, the petitioner asserts, "The Beneficiary . . . does not only meet the requirement under 8 C.F.R. 214.2(l)(1)(ii)(C) 'Executive capacity,' he also meets the requirements under 8 C.F.R. 214.2(l)(1)(ii)(B), 'Managerial Capacity' . . ." The petitioner then proceeded to quote at length the descriptions of the beneficiary's duties set forth in the petitioner's supporting letter dated July 24, 2003, submitted with the petition, and in the petitioner's August 13, 2003 response to the director's request for further evidence.

The petitioner also submitted additional evidence, including, *inter alia*, a lease effective September 1, 2003 through September 2007 and what appears to be the resumes and educational certifications of persons the petitioner claims to be subordinate personnel. The petitioner claims that these documents were not available at the time the petition had to be filed in order to meet the deadline for an extension. The petitioner also submits a revised organizational chart, claiming that in the chart originally submitted, an accountant and financial advisor were "inadvertently omitted." The petitioner contends that the new organizational chart and the job descriptions in the supporting letter and response to the request for further evidence "clearly demonstrate that the Beneficiary manages a subordinate staff of professional and supervisory personnel who relieve him from performing non-qualifying duties."

¹ The AAO notes that in the decision, the director cited to the regulations at 8 C.F.R. § 214.2(l)(3)(v), pertaining to a visa petition involving the opening of a new office, rather than the regulations at 8 C.F.R. § 214.2(l)(14)(ii), pertaining to the extension of a visa petition involving the opening of a new office. However, in reviewing the director's decision, the AAO is satisfied that the correct standards were applied with respect to the dispositive issue in this matter.

To establish L-1 eligibility under section 101(a)(15)(L) of 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.

At the outset, the AAO notes that the 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 this instance, while the petitioner claims on appeal that the director has erred in his decision denying the petition, the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. Accordingly, the appeal must be summarily dismissed.

Insofar as the petitioner sought to establish eligibility by submitting additional evidence on appeal, the AAO notes that under the relevant regulations, the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence by the director is to elicit further information that clarifies whether eligibility for the benefit sought has been established, *as of the time the petition is filed*. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

In addition, to the extent the petitioner now offers a revised organizational chart of the U.S. entity and employee information that differ significantly from evidence originally submitted, the AAO notes that the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting that there were inadvertent omissions in the original organization chart, for example, does not qualify as independent and objective evidence. Evidence that the petitioner creates after the Citizenship and Immigration Services (CIS) points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Moreover, the petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). 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).

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.