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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

D7

JUN 14 2005

FILE: LIN 02 245 50938 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner [redacted]
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 nonimmigrant visa petition was approved by the Director, Nebraska Service Center. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately 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, a Delaware corporation, engaged in industrial transportation management, claims that it is a subsidiary of [redacted] located in Canada. The petitioner seeks to classify the beneficiary 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), as a specialized knowledge worker (L-1B). The petitioner seeks to employ the beneficiary as a traffic supervisor.

The beneficiary, a Canadian citizen, submitted the petition at the port of entry in Calgary, Alberta, Canada on July 18, 2002 pursuant to 8 C.F.R. § 214.2(l)(17)(i). The beneficiary was admitted to the United States in L-1B status and the approved petition was forwarded to the Nebraska Service Center, which affirmed the approval on July 26, 2002.

However, on April 4, 2003, the director served notice upon the petitioner of its intent to revoke the approval of the petition pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(B). The director stated that a review of the record indicated that the beneficiary does not possess specialized knowledge as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii). The director granted the petitioner 30 days in which to submit evidence in support of the petition and in opposition to the revocation. The petitioner did not submit a response.

On August 28, 2003, the director revoked the approval of the petition. In revocation proceedings, the director found that the petitioner failed to establish that the beneficiary had specialized knowledge or that the beneficiary would be employed in a capacity requiring specialized knowledge. The director noted in his decision that the instant petition was submitted just four days after the beneficiary was denied entry in L-1B classification at the port of entry in Portal, North Dakota, where she stated that she had trained others to perform the duties she would be performing in two weeks.[1]

On appeal, counsel for the petitioner submits a letter and asserts that the director erroneously minimized the importance and complexity of the position offered to the beneficiary. Counsel further explains the proposed duties and states that the position requires advanced knowledge of corporate processes.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. Furthermore, the beneficiary must seek

[1] It is noted for the record that the Director, Nebraska Service Center, subsequent to the denial of the beneficiary's application for admission in L1B status, issued a request for additional evidence and ultimately denied the previous petition on April 4, 2003 (LIN 02 243 51435).

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. 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). 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 notice of the grounds for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(l)(3)(ii), the director reviewed the rebuttal evidence and concluded that the petitioner had not established that the beneficiary does not possess specialized knowledge. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(2).

The regulation at 8 C.F.R. § 214.2(l)(3) requires that an individual petition filed on the Form I-129 shall be accompanied by:

> (iv) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
>
> (iv) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iv) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
>
> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in this proceeding is whether the beneficiary possesses specialized knowledge and whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214©(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a supporting letter dated July 15, 2002, the beneficiary's proposed U.S. duties as a Traffic Supervisor were described as the following:

> The candidate will be required to perform a multitude of regulatory duties which will include, but not limited to, maintaining control over equipment and drivers with respect to customers requirements, and equipment specifications, coordinate [the company's] response to regulatory authorities in accordance with [the company's] corporate policies and procedures, and provide guidance and information with respect to product stewardship, union agreements, and route-relevant hauling patterns and regulations. The candidate will be responsible for acting as a liaison for shop personnel, clients and other . . . Corporation branch locations. The candidate will also arrange for specific driver training as it may become required. It is therefore essential that the candidate possess an advanced level of knowledge of [the company's] processes as this position will be critical in ensuring commercial consistency.

In addition, the petitioner claimed that the beneficiary has more than fourteen years of experience with the company, she possesses senior level experience and has specific, specialized knowledge of the company's policies, processes, and practices. The petitioner briefly described the beneficiary's current duties as a claims supervisor, and stated that she previously served as a traffic supervisor with the Canadian entity for a three-year period.

On July 18, 2002, the petition was approved at the port of entry. However, on April 4, 2003, the director served notice upon the petitioner of its intent to revoke the approval of the petition pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(2). The petitioner did not submit a response to the notice of intent to revoke the approval.

On August 28, 2003, the director revoked the approval of the petition because the petitioner failed to establish that the beneficiary had specialized knowledge or that the beneficiary would be employed in a capacity requiring specialized knowledge. The director noted that the beneficiary was previously denied L-1B classification for the same position at a different port of entry on July 14, 2002, just four days prior to submitting the instant petition, based on the beneficiary's

statement that she was able to train people in two weeks to do the job that she was coming to perform. The director concluded that the beneficiary's knowledge, while not widely held, is easily transferred and not advanced compared to knowledge generally held in the trucking industry.

On appeal, the petitioner provides a more detailed description of the beneficiary's duties and asserts that the position requires "an advanced level of knowledge of [the petitioner's] corporate processes and safe practices in the movement of hazardous materials.

In addition, the petitioner reiterates the qualifications of the beneficiary and claims that the company's three management hubs require twelve employees proficient in the use of FSS to maintain the movement of the fleet. The petitioner further claims that the beneficiary's "previous experience in the role of Traffic Supervisor as well as her involvement with the installation and training on FSS is deemed SPECIALIZED KNOWLEDGE by [the company]." Finally, the petitioner stated, "Regardless of what [the beneficiary] may have said in her agitated state during the interview at Portal, training an employee to proficiency on FSS takes a minimum of one year."

Counsel's assertions are not persuasive. Generally, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). The evidence of record clearly shows that the notice of intent to revoke was properly sent to the petitioner's address of record. *See* 8 C.F.R. § 103.5(a). 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). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Upon review of the record, the AAO concurs with the director's decision to revoke the approval of the petition. The petitioner failed to offer any exaplantion or rebuttal to the director's properly issued notice of intention to revoke the approval. Accordingly, pursuant to *Matter of Arias, supra,* the director's decision to revoke the petition's approval will not be disturbed.

Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that the beneficiary has been employed in a capacity requiring specialized knowledge with the foreign entity. For example, the petitioner described the beneficiary's foreign duties in its supporting letter. The petitioner claimed that the beneficiary was "primarily responsible for maintaining control of equipment and drivers in conjunction with customer requirements." However this description is broad and it is unclear as to what responsibilities the beneficiary handled. 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)). Therefore, the petitioner has failed to demonstrate that the beneficiary has been primarily employed by the

foreign entity in a specialize knowledge worker capacity. 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 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.* 3 45 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).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.