U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: EAC 03 170 50118 Office: VERMONT SERVICE CENTER Date: SEP 07 2005

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 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee with its United States subsidiary pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The United States entity is a corporation organized in the State of Delaware that is engaged in the import and sale of meat products from Australia. The petitioner seeks to employ the beneficiary in the role of sales manager for a four-year period.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary was employed with the foreign entity in a qualifying managerial or executive capacity, (2) that the beneficiary will be employed with the United States entity in a qualifying capacity, or (3) that the United States entity has been doing business for at least one year.

On appeal, the petitioner submits extensive documentation that was previously requested by the director in his request for evidence. The petitioner does not object to the denial of the petition, nor does its representative specify any erroneous conclusions of law or statements of fact on the part of the director. Instead, he merely asserts that "further information/evidence required to satisfy the original petition is now available," and herein submits the evidence previously requested. The petitioner also states "it is our opinion that the position [the beneficiary] has held [with the Australian entity] as Sales and Marketing Manager-North America does meet all criteria listed. In particular Section 101(a)(44)(A)(i) is satisfied." The petitioner does not address the issue of the beneficiary's proposed United States employment.

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 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The director issued a lengthy request for evidence on July 17, 2003, requesting: (1) evidence to establish a qualifying relationship between the Australian petitioner and the United States entity; (2) evidence to establish that the beneficiary has been employed with a qualifying organization for at least 12 months in the previous three years, including his personal tax return and payroll records; (3) evidence to establish that the beneficiary has been and will be employed in a managerial or executive capacity, including a comprehensive job description, employment history, number of employees supervised, evidence of managerial decisions made, scope of discretionary decision-making authority, and job titles and duties of his subordinates; and (4) evidence to establish that the United States entity has been engaged and is presently engaged in the regular systematic and continuous provision of goods or services, including evidence of the financial status of the company, banks statements, and a copy of the latest U.S. corporation income tax return. While the petitioner

submitted a response received on July 28, 2003, the petitioner did not submit the requested evidence. Most of the documents submitted were copies of documents submitted with the initial petition and were not responsive to the director's concerns. Yet, the petitioner now submits much of the requested evidence on appeal.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence 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.

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.

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.