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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: LIN-04-069-52853 Office: NEBRASKA SERVICE CENTER Date: APR 03 2006

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:

[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 Director, Nebraska 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 is a leather goods importer and exporter. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its Chief Executive Officer. The director denied the petition concluding that the petitioner failed to establish the following factors: 1) that the petitioner has a qualifying relationship with the claimed foreign entity; 2) that the petitioner has been doing business for one year; 3) that the foreign entity is currently doing business; and 4) that the beneficiary has been and will continue to be employed in a managerial or executive capacity.

On appeal, counsel requested an additional 30 days in which to submit a brief addressing the director's denial. Although counsel stated a general objection to the denial on the I-290B appeal form, she failed to adequately address the director's conclusions. In the statement, counsel cites an interoffice memo and asserts that the petitioner is eligible for the benefit sought. However, the director did a thorough analysis and specifically discussed inconsistencies among a number of the submitted documents. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Contrary to counsel's assertions, the facts of the case do not speak for themselves, particularly in light of the director's detailed list of reasons for denying the petition. Rather, the record shows a number of inconsistencies, including the date the petitioner was established. 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). In the instant case, counsel fails to acknowledge, much less resolve the inconsistencies discussed in the denial.

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.

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 case the petitioner simply asserts that it is qualified to receive the classification and erroneously cites a memo allowing for deference where the facts of a petition have not changed. This is the first request for an extension of a new office petition, which the memo clearly states is inapplicable.[1] In addition, a new office extension is evaluated under a different set of criteria than an initial petition, and thus the memo does not apply. Therefore, the petitioner's assertion that the cited memo precludes adjudication of eligibility by CIS is not persuasive, and standing alone does not constitute specifically identifying 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.

[1] The AAO would note that this is the second request for an extension, however the initial request was submitted in order to provide the petitioner with the full one year period for the initial start-up phase of the business. This petition is the first extension request adjudicated under the new office extension criteria outlined at 8 C.F.R. § 214.2(*l*)(14)(ii).