U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

D7

FILE: WAC 05 134 50567 Office: CALIFORNIA SERVICE CENTER Date: DEC 0 6 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, Chief
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 filed this nonimmigrant petition seeking to extend the employment of its president 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, a California corporation, states that it is engaged in the international trade of general merchandise. It claims to be a subsidiary of [redacted], located in Seoul, Korea. The beneficiary was initially granted L-1A status in May 2000 and subsequently granted a two-year extension of stay in April 2003. The petitioner now seeks to extend the beneficiary's status for a three-year period.

The director denied the petition on June 27, 2005, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

On the Form I-290B, Notice of Appeal filed on July 26, 2005, counsel for the petitioner simply asserts: "US CIS erred in denying said petition. Counsel indicated on Form I-290B that a brief would be submitted within 30 days. On October 11, 2006, the AAO contacted counsel by facsimile to advise him that to date, no brief or additional evidence has been incorporated into the record of proceeding. Counsel was afforded an opportunity to provide a copy of any evidence that was previously submitted within the 30-day period indicated on Form I-290B. On October 11, 2006, counsel advised the AAO that no additional brief or evidence had been submitted. Accordingly, the record of proceeding is complete.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objection to the denial of the petition, without identifying any specific erroneous conclusion of law or statement of fact, is insufficient to overcome the director's determination. Counsel's limited statement on appeal fails to address, much less overcome, the well-founded conclusions reached by the director based on the evidence in the record. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As noted by the director, the petitioner has failed to submit evidence to corroborate its claimed staffing structure, and therefore, the record as presently constituted does not establish that the U.S. company employs a staff sufficient to relieve the beneficiary from performing the non-qualifying duties of the petitioner's import-export business, which appears to engage in both wholesale and retail sales activities. In response to a request for evidence issued on May 6, 2005, the petitioner submitted an organizational chart depicting eight employees, including the beneficiary as president, two managers, a secretary, a warehouse employee, a part-time delivery person, and two independent sales representatives. The petitioner's California Form DE-6, Quarterly Wage and Withholding Report, for the quarter ended on March 31, 2005, confirmed the

employment of only the beneficiary and a manager responsible for sales, purchasing and customer care. 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). The petitioner submitted no documentary evidence of its use of independent sales representatives. 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)).

Furthermore, the petitioner's description of the beneficiary's duties includes a combination of vague and non-qualifying duties, and is insufficient to establish that he would be employed in a primarily managerial or executive capacity under the extended petition. For example, the petitioner stated that the beneficiary will "manage & direct all the operation," "review activities and reports," "develop appropriate company courses of action," and "coordinate activities of International Trade and Manufacturing division." The petitioner failed to describe the specific managerial or executive duties performed by the beneficiary within the scope of these broad responsibilities, and does not claim to have an "International Trade and Manufacturing Division." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition the petitioner indicated that the beneficiary "plans & directs trade moving to overseas destinations," "supervises workers engaged in shipping & receiving & shipping, freight, documents, way billing charges and collecting fees for shipments," "examines invoices [and] shipping manifests," and "negotiates with domestic customers." As discussed above, the petitioner has not established that it has any employees engaged in export trade, shipping and receiving or fee collection duties. Thus, either the beneficiary himself is performing these non-qualifying duties or he does not actually manage these activities as claimed by the petitioner. In either case, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. 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 petitioner also failed to clarify how routine tasks such as "negotiating" with customers or examining invoices fall under the statutory definitions of managerial or executive capacity. See section 101(a)(44) of the Act.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. As noted by the director, the record does not demonstrate that the petitioner has a sufficient number of employees in the United States who could purchase goods, manage the company's warehouse and monitor its inventory, arrange import and domestic transportation goods, perform the company's day-to-day wholesale and retail sales activities, issue invoices, perform clerical and administrative functions, market the petitioner's products, or perform routine accounting and bookkeeping functions. The petitioner's general description of the beneficiary's duties and the lack of personnel in the United States to perform the petitioner's non-qualifying day-to-day operational tasks precludes a finding that the beneficiary would be engaged in primarily managerial or executive duties. The AAO thus concurs with the director's finding that the beneficiary would

reasonably be required to perform primarily non-qualifying operational and administrative duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l,* 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO notes that CIS previously approved two L-1A petitions filed on behalf of the beneficiary. The prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx., 556, 2004 WL 1240482 (5th Cir. 2004). If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Further, each nonimmigrant petition is a separate record of proceeding with a separate burden of proof. Based on the limited evidence submitted in support of the petitioner's claim that the beneficiary would be employed in a managerial or executive capacity, the director was justified in departing from the prior L-1A petition approval sand denying the instant petition.

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 counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must 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. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.