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

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[redacted]

FILE: EAC 03 031 52747 Office: VERMONT SERVICE CENTER Date: JUL 10 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, Vermont Service Center, initially approved the nonimmigrant visa petition. Upon receipt of information obtained pursuant to an overseas investigation, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 is a New York corporation that intends to engage in the wholesale distribution and retail sale of jewelry. The petitioner claims that it is a subsidiary of Vazmont, located in Cuenca, Ecuador. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a one-year period.

The petitioner filed the nonimmigrant petition on November 8, 2002, and the director approved the petition on November 12, 2002. On April 21, 2004, the director issued a notice of intent to revoke the approval advising the petitioner that as a result of the beneficiary's nonimmigrant visa interview and a subsequent investigation by the U.S. Consulate in Guayaquil, Ecuador, it had been determined that the beneficiary does not operate the claimed business overseas. The director noted that the results of the interview and investigation also raised questions as to the beneficiary's intent to start a business in the United States. The director provided the petitioner with a copy of a June 13, 2003 memorandum summarizing the findings of the nonimmigrant visa interview and overseas investigation. The directly properly advised the petitioner that it was allowed 30 days in which to submit any evidence that would overcome the stated reasons for revocation before the decision to revoke approval of the petition became final.

On August 27, 2004, the director revoked the approval of the petition, noting that the petitioner had not submitted a response to the Notice of Intent to Revoke.

The evidence of record clearly shows that the notice of intent to revoke was properly sent to counsel's address of record, which was also the address of record for the petitioner. *See* 8 C.F.R. § 103.5a. The director's April 21, 2004 notice of revocation was sent to the same address, and was delivered to counsel. Therefore, the AAO concludes that the notice of intent to revoke the petition was properly issued and delivered to the appropriate parties.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner did not receive the April 1, 2004 Notice of Intent to Revoke. In support of the appeal, the petitioner submits a declaration from the beneficiary and her spouse, the foreign entity's taxpayer registration documents, a statement from the foreign entity's accountant, and reference letters from various businesses and individuals claiming to have ongoing business with the beneficiary and the foreign entity in Ecuador.

Although counsel asserts that the petitioner did not receive the April 21, 2004 Notice of Intent to Revoke and attached memorandum from the U.S. Consulate, the type of evidence submitted on appeal suggests that the petitioner did in fact receive these documents. The evidence submitted reflects that the petitioner had notice of the specific grounds for revocation. However, the AAO notes that the August 27, 2004 Notice of Revocation

does not specifically address the grounds for revocation mentioned in the April 21, 2004 notice, but rather advises that the petition approval is being revoked based on the petitioner's failure to respond to the notice of intent to revoke.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

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 a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(*4*): "The statement of facts contained in the petition was not true and correct."

In the present case, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was in the record at the time the notice was issued. The findings of the U.S. Consulate in Guayaquil upon interview of the beneficiary and subsequent investigation of the foreign entity raised very serious concerns that there was no qualifying foreign employer, and no intention on the part of the petitioner to do business in the United States. The investigator visited three different addresses, including that provided by the beneficiary during her nonimmigrant visa interview, and was unable to verify the existence of the foreign entity's business operations. The petitioner did not offer a timely explanation or rebuttal to the notice of intention to revoke and has not overcome the deficiencies contained in the record.

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).

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.

The petitioner failed to offer any explanation or rebuttal to the director's properly issued notice of intention to revoke. 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 record does not contain evidence that the intended United States operation would support an executive or managerial position within one year, including evidence: describing the scope of the entity, its organizational structure, and its financial goals; showing the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and depicting the organizational structure of the foreign entity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). In addition, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner has provided a brief and vague description of the beneficiary's role as general manager of the foreign entity that fails to identify the specific duties she performs. The petitioner noted that "she is responsible for the marketing, administration, supervision and management of the company," and that she "coordinates the work so as to run the business in an efficient and profitable matter." No other information regarding the beneficiary's duties with the foreign entity was provided. 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)). Approval of the petition without the above-referenced evidence was clearly error on the part of the director. For these additional reasons, the petition cannot 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 of 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*. 345 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 dismissed.