

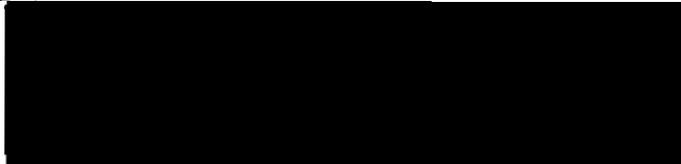


U.S. Citizenship
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Services

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FILE: WAC 04 232 51551 Office: CALIFORNIA SERVICE CENTER Date: JUL 27 2000

IN RE: Petitioner:
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:



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 [REDACTED] claims to be a subsidiary of [REDACTED] located in Israel. The U.S. entity was incorporated in California in April 2004 and is engaged in the import/export business. The U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an executive or manager for three years. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of general manager.

The director denied the petition concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity.

On appeal, the petitioner did not submit a brief. The appeal consisted of Form 1-290B where counsel for petitioner asserts: "The beneficiary is, in fact, in a managerial capacity and has already hired U.S. workers who will be responsible for the U.S. entity's administrative responsibilities." The petitioner did not submit any additional materials on appeal. The appeal fails to adequately address the director's conclusions.

Upon review, the concurs with the director's decision and affirms the denial of the petition. Based on the minimal documentation in the record, it cannot be determined that the petitioner has established that the beneficiary will be in a position of managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)).

The director's decision states that the evidence submitted does not establish that the beneficiary will hold a position of managerial or executive capacity in the United States. In addition, the director suggests that the petitioner has not established that the United States entity contains the organizational complexity to support an executive or managerial position. The director found that the petitioner has not established that the beneficiary will be performing duties which primarily require him to plan, organize, direct and control the organization's major functions by working through other managerial or professional employees in the United States.

On appeal, the petitioner states that the beneficiary is in a managerial capacity. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director or providing new evidence to support that the beneficiary is in a position of managerial capacity, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. 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. at 165. 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).

Furthermore, in the response letter dated December 4, 2004, the petitioner asserts, "[the beneficiary] is responsible for hiring a sales and marketing team for [the petitioner] in the coming months." However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Contrary to the petitioner's assertions that the beneficiary is eligible for the benefit sought due to the fact that the beneficiary "is, in fact, in managerial capacity," and that the beneficiary has hired U.S. workers responsible for the administrative responsibilities, particularly in light of the director's detailed reason for denying the petition, the facts in this case do not meet the burden in evidencing that the beneficiary will be employed in a primarily managerial or executive capacity. Rather, the record shows that the beneficiary will be performing the day-to-day operations since at the time of filing the petition, the petitioner indicated that the only employee of the United States entity was the beneficiary. Thus, there are no other employees to perform the non-managerial daily activities of the business. Therefore, it appears that the beneficiary will be providing the services of the business rather than directing such activities. 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, petitioner fails to resolve the concerns discussed in the denial.

To establish L-1 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.

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 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.