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

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

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FILE: SRC 05 165 50721 Office: TEXAS SERVICE CENTER Date: NOV 06 2006

IN RE: Petitioner:
Beneficiary: [redacted]

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 BENEFICIARY:

[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, Texas 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 rejected.

The petitioner states that it is a property management and development company. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its executive officer as an L-1A non-immigrant 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 beneficiary was initially granted a one-year period of stay to open a new office in the United States. The director denied the petition, finding that the petitioner failed to establish that (1) the U.S. entity had been doing business for the previous year; or (2) the beneficiary will be employed in a managerial or executive capacity.

The Form G-28, Entry of Appearance as Attorney or Representative, dated August 23, 2005 was not signed by the petitioner or an authorized representative thereof, but rather by the beneficiary, who noted on the Form G-28 that the form was filed on his behalf as the "Applicant." It is noted that, while the beneficiary does appear to have been an agent for the petitioner, there is no evidence in the record that the beneficiary was legally authorized to sign the Form G-28 as a representative on behalf of the petitioner with regard to the appeal before the AAO. Specifically, the Form G-28 submitted by counsel clearly limits his representation/appearance to the beneficiary.

Citizenship and Immigration Services (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Generally, when an appeal is filed by a beneficiary or his representative, it must be rejected. 8 C.F.R. §103.3(a)(1)(iii)(B); 8 C.F.R. §103.3(a)(2)(v)(A)(*1*). As the beneficiary and his representative are not recognized parties in this matter, counsel is not authorized to file an appeal. 8 C.F.R. **§ 103.3(a)(1)(iii)(B).**

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

Even if the appeal were considered properly filed, it would be summarily dismissed for failure to specifically identify any erroneous conclusion of law or statement of fact. Specifically, on appeal, counsel only provided the following statement on the Form I-290B:

> Petitioner requested a second one year start up to enable him to start operating due to business problems during the first year.

No additional documentation, such as legal arguments or supporting evidence, was submitted. Counsel's statement on the Form I-290B failed to adequately address the director's conclusions. Counsel's general statement, without specifically identifying any errors on the part of the director, is 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

While the petitioner may request that it be granted additional time to submit an appeal, no such request was made in this case. *See* 8 C.F.R. § 103.3(a)(2)(vii). Even if additional time to submit a brief in support of the appeal had been requested and approved, to date there is no indication or evidence that the petitioner ever

submitted a brief and/or evidence in support of the appeal with the Service or with the AAO. As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, any erroneous conclusion of law or statement of fact. Hence, the appeal would have been summarily dismissed if it were not being rejected. *See* 8 C.F.R. § 103.3(a)(1)(v).

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.

Counsel's assertion that " a second one year start up" was requested to allow the petitioner to establish its business is irrelevant. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

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 would have been summarily dismissed, if it were not being rejected as improperly filed.

ORDER: The appeal is rejected.