identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 05 072 50218 Office: TEXAS SERVICE CENTER Date: APR 04 2007

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, 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 summarily 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, a Florida corporation, states that it is engaged in the import and export of security equipment. The petitioner claims to be a subsidiary of Security Line Ltda,, located in Colombia. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a three-year period in L-1A classification to serve as its general manager.

The director denied the petition on November 16, 2005, concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; (2) the size of the investment in the United States entity by the foreign entity or the ability to commence doing business in the United States; or (3) that the petitioner had secured sufficient physical premises to house the new operation.

The petitioner subsequently filed an appeal on December 16, 2005. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B Notice of Appeal, counsel for the petitioner asserts:

> Beneficiary is employed in a primarily managerial/executive capacity. Beneficiary manages a clearly defined department and function of the petitioner. A brief and additional evidence will be submitted within 30 days.

As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on January 9, 2007 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents within five business days. As of this date, the AAO has not received a response. Accordingly, the record is now 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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. 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). Furthermore, counsel has only addressed one ground for denial, while the petition was denied by the director on multiple alternative grounds.

Contrary to counsel's assertion on appeal, the evidence submitted does not establish that the beneficiary will manage "a clearly defined department and function" of the petitioning organization, or that she will be employed in a primarily managerial or executive capacity within one year, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner has not provided a description of the beneficiary's proposed duties as general manager of the U.S. company, nor has the petitioner provided evidence describing the scope of the new office or its proposed organizational structure. 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 director specifically requested evidence of the personnel and functions to be managed by the beneficiary by the end of the company's operations, and the petitioner failed to respond to the request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Beyond the decision of the director, another issue to be discussed is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims that the beneficiary's foreign employer, Security Line Ltda., owns a 51 percent interest in the U.S. company. In her request for evidence dated May 25, 2005, the director specifically requested evidence to establish the current ownership and control of both companies, to include all stock certificates, copies of corporate bylaws, or copies of published annual reports. In response, the petitioner submitted the minutes of a meeting of the shareholders of the U.S. company, dated January 5, 2005, which stated that the sole shareholder in attendance for the meeting was [redacted] the holder of 200 shares of the petitioner's stock. The meeting minutes indicate that the shareholders resolved to sell 102 shares of stock to Security Line Ltda. The record does not contain a copy of the petitioner's articles of incorporation, by-laws, stock certificates, stock transfer ledger, or any other corporate documentation which would establish the total number of shares authorized, the total number of shares issued as of the date of filing, or the names of all shareholders and the percentage of shares owned by each. The submitted documentation is insufficient to support the petitioner's claim of majority ownership by the foreign entity. Again, 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. For this additional reason, the appeal will be dismissed.

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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.