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

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[redacted]

FILE: SRC 06 098 52442 Office: TEXAS SERVICE CENTER Date: APR 05 2007

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 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 nonimmigrant visa petition. 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 vice president-ship devision 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 Delaware limited liability company, claims to be an affiliate of the beneficiary's previous foreign employer, Giant, located in Switzerland. The petitioner states that it is engaged in the purchase and resale of commercial aircraft parts, and in the purchase, reconstruction and sale of large commercial ships. The beneficiary has been employed by the petitioner in L-1A status since January 2001, and the petitioner now seeks to extend the beneficiary's stay for two additional years.

On May 17, 2006, the director denied the petition, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director observed that the record indicated that the beneficiary is the sole employee of the U.S. entity and therefore, the petitioner had not established that he would be relieved from primarily performing non-qualifying duties associated with the day-to-day operations of the company.

On the Form I-290B Notice of Appeal, filed on June 16, 2006, counsel for the petitioner states:

> Building ships is a unique business, where we do not employ the same number of people. However, we still need an executive to follow up with proposals, then, when the project is secured, we hire individuals to finish it.

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.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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 does not identify an erroneous conclusion of law or a statement of fact in the director's decision as a basis for the appeal. 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, counsel's brief statement on appeal does not address, much less overcome, the specific deficiencies in the record addressed in the director's decision. The petitioner represented the beneficiary as being responsible for "all ship operations of the Company," including responsibility for supervising subcontractors in the areas of engineering, electrical, carpentry, ship operations and other skilled workers, and responsibility for coordinating the acquisition of materials and suppliers.

On April 26, 2006, the director requested that the petitioner submit an organizational chart for the U.S. entity, including the names, job titles and detailed job description for each employee, as well as the petitioner's latest federal tax return, state and federal quarterly wage reports, and the beneficiary's latest IRS Form W-2, Wage and Tax Statement. In response, the petitioner submitted a "corporate organizational chart" indicating that the petitioner has two employees, including the beneficiary. The chart identified a "sister company," [redacted] LLC, with three employees, and a [redacted] The petitioner submitted a Form 941, Employer's Quarterly Federal Tax return for the claimed New York affiliate, which showed four employees, for the first quarter of 2006. The petitioner's Form 941 for the same period indicates that the beneficiary is the only employee. The petitioner neither indicated nor submitted evidence that the beneficiary actually supervises any employees.

With respect to the beneficiary's compensation for the previous year, the petitioner submitted evidence that he received a Form W-2 and a Form 1099, totaling approximately $28,000 from [redacted] a law firm; $10,306 in Form 1099 compensation from [redacted] and $2,000 in Form 1099 compensation for [redacted] The petitioner's Form 1065, U.S. Return of Partnership Income, for 2005 indicates total assets of $127, no income, no wages paid, no payments to the petitioner's claimed "subcontractors," and no business activities of any type. The petitioner also submitted a 2005, Form 1040, Schedule C, Profit or Loss From Business, for [redacted] which appears to be a sole proprietorship owned by a [redacted], and a copy of the 2005 Form 1065 for [redacted] The petitioner noted that the "limited activity" of the U.S. company is "because it is a service company for its foreign and U.S. affiliate companies." The petitioner noted that, in 2005, the beneficiary's wages were "allocated among the U.S. affiliates . . . based on the amount of work done for each of them." The petitioner offered no further evidence to establish that the two claimed U.S. affiliates are actually related to the petitioner other than stating that they have "common shareholders." 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)).

Overall, the evidence submitted does not even establish that the beneficiary is still employed by the petitioner, or that the petitioner is still doing business, much less establish that beneficiary is performing primarily managerial or executive duties. The beneficiary appears to have been receiving the majority of his income from a New York-based law firm that has not been shown to be related to the petitioning organization. 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).

Beyond the decision of the director, the petitioner has not established that the U.S. company and the beneficiary's claimed foreign employer maintain a qualifying relationship. 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 director specifically requested evidence of the ownership and control of both the foreign and United States entities in the form of stock certificates, copies of corporate by/laws constitutions, certified affidavits from corporate executives or corporate legal counsel, or copies of published annual reports which clearly indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation. The director also requested evidence that both companies are qualifying organizations that continue to do business in the United States and abroad.

On Form I-129, the petitioner indicated that the U.S. company and the beneficiary's previous foreign employer, "Giant" of Zurich, Switzerland, have an affiliate relationship based on ownership by a common parent company. In response to the director's request for evidence, the petitioner submitted a copy of a letter ostensibly from the president of "Giant, Ltd." showing a Nassau, Bahamas address. The letter states, in part, "Giant and [the petitioner] are currently owned by the same shareholders and hence are 'affiliates' and part of a 'qualifying organization.'" The petitioner did not submit additional evidence to identify the names and ownership interests of the claimed "same shareholders," nor present persuasive evidence that either company is actually engaged in the regular, systematic and continuous provision of goods and/or services. 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). For this additional reason, 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).

Inasmuch as the petitioner has failed to identify an erroneous conclusion of law or a statement of fact in support of the appeal, the regulations mandate the summary dismissal of the appeal.

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 summarily dismissed.