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

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[redacted]

File: SRC 02 203 50224 Office: TEXAS SERVICE CENTER Date: AUG 01 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)

IN 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 dismissed.

The petitioner filed this nonimmigrant visa petition seeking approval for the beneficiary's employment by its United States operation as its general manager 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 business organization formed under the laws of Canada and allegedly has a qualifying relationship with [redacted] a Florida corporation.[1] The beneficiary was initially granted a two-year period of stay (April 27, 1999 until October 31, 2001), and the United States operation now seeks to again employ the beneficiary.[2]

The director denied the petition concluding that the petitioner did not establish that it and the United States operation are still qualifying organizations because it was not established that the petitioner is currently doing business.

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. In support of the appeal, counsel to the petitioner asserts that it is actively engaged in doing business.

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.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

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[1]According to Florida state corporate records, the United States operation changed its name to [redacted] on February 10, 2006. Furthermore, the AAO notes unresolved inconsistencies in the record regarding the names of both the petitioner and the United States operation. First, the petitioner, a Canadian business organization, is referred to in the petition as [redacted]" However, the Canadian company is also referred to in the supporting documents as '[redacted]" Second, the United States operation is described as [redacted]" even though supporting documentation was submitted which refers to the United States company as "Bhagway Transport, Inc."

[2]It should be noted that, even though the beneficiary's stay in the United States expired on October 31, 2001, the instant petition filed on June 27, 2002 sought to extend the beneficiary's stay. As the director denied the petition and the AAO will dismiss the appeal, the director's consideration of the petitioner's explanation regarding the untimely filing of the instant petition need not be addressed. First, the beneficiary's stay cannot be extended in this case, regardless of the petition's timeliness, because the petition has been denied. Second, there is no appeal from a denial of an extension of stay. 8 C.F.R. § 214.1(c)(5).

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in this matter is whether the petitioner has established that it is "doing business" and is thus a qualifying organization.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by:

> Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing Business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, the petitioner submitted business documents for its Canadian business operation. These documents only report business activity through April 2001. As the instant petition was filed on June 27, 2002, the director requested additional evidence on December 10, 2002. Specifically, the director requested copies of the foreign operation's 2001 tax return and the foreign company's October 2001 payroll register.

In response, the petitioner provided a Canadian tax return for the year ending September 30, 2001. This return indicates that the petitioner had a gross income of $155,646.32 and a net income of $508.13 during that time period. The petitioner also provided a letter from the United States operation dated January 23, 2003 explaining that the Canadian operation has no payroll register and that it has eliminated its "overhead" by "downsizing and outsourcing." The United States operation further explains that "administrative work" and "jobs" are being performed by third parties. Finally, the petitioner offered no evidence of its business operations after September 30, 2001. As stated above, the instant petition was filed on June 27, 2002.

On May 21, 2003, the director denied the petition concluding that the petitioner did not establish that it and the

United States operation are still qualifying organizations because it was not established that the petitioner is currently doing business.

On appeal, counsel asserts that the petitioner is actively engaged in doing business in Canada.

Upon review, counsel's assertions are not persuasive, and the appeal will be dismissed.

The record is devoid of any evidence that the Canadian petitioner is engaged in the regular, systematic, and continuous provision of goods and/or services. First, the petitioner offered no evidence that it is currently "doing business." The most recent evidence of any business activity dates from September 2001, over 8 months before the filing of the instant petition. Second, the evidence submitted by the petitioner is also insufficient to establish that it was doing business in 2001. As explained in the letter dated January 23, 2003, the petitioner has no employees and has contracted away all of its work and business functions to third parties. Merely maintaining a presence in Canada of an agent or office for purposes of "outsourcing" all of its business functions is not sufficient under the regulations. 8 C.F.R. § 214.2(l)(1)(ii)(H). Such activity does not constitute the regular, systematic, and continuous provision of goods or services.

While counsel asserts on appeal that the foreign operation requires a full-time employee to negotiate and contract with clients, counsel offers no evidence of this employee's existence. Likewise, counsel fails to substantiate any of his claims on appeal regarding the foreign petitioner's business activities. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). 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)).

Accordingly, in this matter, the petitioner has failed to establish that it and the United States operation are still qualifying organizations because it was not established that the petitioner is currently "doing business."

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been or will be employed primarily in a managerial or executive capacity as defined in section 101(a)(44) of the Act. In support of its petition, the petitioner has provided vague and nonspecific descriptions of the beneficiary's duties abroad and in the United States that fail to demonstrate what the beneficiary does, or will do, on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Without specific and credible job descriptions, it must be concluded that the beneficiary has been, and will, perform tasks necessary to produce a product or provide a service. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary supervises and controls, or will supervise and control, the work of other supervisory, managerial, or professional employees, or manages, or will manage, an essential function of an organization. While the petitioner has claimed that the beneficiary has supervised, and will supervise, subordinate managers, the petitioner has not credibly established that these subordinate employees are truly supervisory, managerial, or professional employees. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Finally, due to the same vague job descriptions, the petitioner has failed to establish that the beneficiary is acting, or will act, primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary has been or will be employed primarily in a managerial or executive capacity, and the petition may not be approved for this additional reason.

The initial approval of an L-1A petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *See Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. The petitioner has not met this burden.

ORDER: The appeal is dismissed.