U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted] **PUBLIC COPY**

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FILE: SRC 06 053 53554 Office: TEXAS SERVICE CENTER Date: MAR 30 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 states that it is a hi-tech telecommunications firm. It seeks to employ the beneficiary as a specialized knowledge worker, in the position of chief financial officer, pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L).[1] The director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner indicated on Form I-290B that it would submit a brief and/or additional evidence to address the director's denial within ninety days. Although counsel submitted a brief statement on the Form I-290B, it failed to adequately address the director's conclusions. In this brief statement, counsel for the petitioner states:

> The Service denied the petition finding that the beneficiary failed to show that she meets the one-year full-time employment abroad within the three years immediately preceding the filing of the petition[] pursuant to 8 C.F.R. §214.2(l)(3)(iii). The Service's interpretation of the law is erroneous as follows: "The Beneficiary must have been employed for one continuous year abroad by the employer since 12/07/02."[] The precise interpretation seems as follows: "[the] Beneficiary's one-year foreign employment should not be [sic] occurred outside the three-year time period from 12/07/02 through 12/07/05. The factual evidence demonstrates that the beneficiary's foreign employment, which was exceeding one-year, occurred within the time zone specified by law. Due to the Service's mis-reading of facts and imprecise interpretation of rule, the Decision shall be reversed.

The director, however, provided a detailed analysis and cited the deficiencies in the evidence in the course of the denial. Specifically, the director noted that based on the filing date of the petition, the petitioner was required to show that the beneficiary had one continuous year of full-time employment abroad between December 7, 2002 and December 7, 2005. The director noted that according to the evidence submitted, the beneficiary began working abroad for the foreign employer in October 2004, but entered the United States on June 26, 2005 in B-1 status. As a result, the director concluded that the beneficiary had been employed abroad for eight months, and therefore had not satisfied the regulatory requirements.

While counsel for the petitioner alleges that the director's interpretation of the law was erroneous, counsel's general objection on the Form I-290B does not specifically identify the director's error and is

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[1] In the denial, the director states that the petitioner seeks to classify the beneficiary as an L-1A manager or executive. It is noted for the record that, on the first page of Form I-129, the petitioner failed to clarify whether it was seeking L-1A or L-1B classification for the beneficiary. Regardless, the basis of the denial addresses a distinct and unrelated issue, and therefore this error by the director has no bearing on the outcome of this petition.

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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On the Notice of Appeal received on May 17, 2006, the petitioner clearly indicates that it would send a brief with the necessary evidence to the AAO within ninety days. 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.[2]

Upon review of the evidence in the record, the AAO concurs with the director's findings. A letter from the foreign employer dated April 7, 2006 confirms that the beneficiary commenced her employment abroad in October of 2004, but was transferred to the United States on June 26, 2005 to render services to the petitioner under a B-1 ("visitor for business") visa. While it appears that the beneficiary may in fact have been employed by and received a salary from the foreign entity during this period, the fact remains that the beneficiary did not remain abroad long enough to accumulate an aggregate total of one year of employment prior to the filing of the petition. The record indicates that the beneficiary was physically present and working for the foreign entity abroad, at best, for eight months in the three years immediately preceding the filing of the petition. While "brief" trips to the United States for business shall not be interruptive of the one year continuous employment abroad requirement, such periods will not count towards the fulfillment of the requirement. 8 C.F.R. § 214.2(l)(1)(ii)(A). As a result, the regulatory requirements have not been satisfied.

Nevertheless, absent a clear statement, brief and/or evidence to the contrary, counsel for the petitioner does not identify, specifically, an erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. *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.

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.

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[2] On March 6, 2007, the AAO sent a fax to counsel for the petitioner. The fax advised counsel that no evidence or brief had been received in this matter and requested that the petitioner submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, the AAO has received no response from counsel or the petitioner.

ORDER: The appeal is summarily dismissed.