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

U.S. Citizenship and Immigration Services

b7

[redacted]

FILE: EAC 06 200 51379 Office: VERMONT SERVICE CENTER Date: NOV 05 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, Vermont 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 extend the employment of its president 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 Texas limited liability company, claims to be engaged in the operation and management of gas stations and convenience stores. It states that it has a qualifying relationship with Metro Shoes, located in India. The beneficiary was originally granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend his status for two additional years.

The director denied the petition on January 10, 2007, concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a managerial or executive capacity; (2) that the U.S. company was doing business for the previous year; (3) that the U.S. entity and the foreign entity have a qualifying relationship; or (4) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on February 12, 2007. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. Counsel for the petitioner states the following on Form I-290B, Notice of Appeal:

> The Service denied the Petition for Nonimmigrant Worker (L Classification) because the Service was not persuaded that the Beneficiary's duties were that of an executive or managerial. The brief to follow will show that the service committed error in looking at the facts of the case and either failed to or incorrectly applied the statute pertaining to the L classification.

Counsel indicated that he would send a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on September 5, 2007 to request that counsel acknowledge whether the brief and/or evidence were timely submitted, and to afford counsel an opportunity to re-submit the documents. To date, no response has been received. Accordingly, the record will be considered 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 conclusions the director reached based on the evidence submitted by the petitioner. 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). Accordingly, the appeal will be summarily dismissed.

Furthermore, contrary to counsel's statement, the director did not deny the petition solely because the director was not persuaded that the beneficiary would be employed in a managerial or executive capacity. As noted above, the director cited four separate grounds for the denial of the petition, only one of which is even disputed by the petitioner on appeal.

With respect to the beneficiary's claimed managerial and executive capacity, the record contains no detailed description of what the beneficiary has been or will be doing as president of the petitioning company. The petitioner asserts that the beneficiary "manages the organization," "functions at the top level of the organizational hierarchy," "exercises discretion over the day-to-day operations," "directs and coordinates activities of the organization," and "formulates and administers company policies." These statements essentially paraphrase the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Moreover, the director specifically requested a comprehensive description of the beneficiary's duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

There is no evidence that the petitioner was doing business at the time of filing or at any point during the first year of operations, thus it has clearly not been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The petitioner claims that it acquired a 49 percent interest in a company that employs two to three people and operates a gas station and convenience store on June 10, 2006, approximately two weeks prior to the expiration of the beneficiary's initial L-1A petition. The petitioner did not submit persuasive evidence that this transaction was completed prior to the date of filing. Moreover, the petitioner did not respond to the director's request for evidence of ownership for the petitioner's claimed subsidiary company, such as its membership certificates. Any 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). The AAO is not persuaded that the petitioner was doing business through a partially-owned subsidiary as of the date of filing, nor is there any

evidence that the beneficiary would actually exert managerial control over this company, as implied by the petitioner. The petitioner also claims to be managing a second gas station in exchange for a management fee of $5,000 per month, since June 1, 2006. The petitioner has not submitted any supporting documentary evidence, such as copies of invoices issued by the petitioner, or evidence of monthly payments received from the owner of the gas station. 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)).

As noted by the director, the petitioner has not provided any evidence of business activities conducted by the petitioning entity in the previous year, aside from the petitioner's claims that it acquired a partially-owned subsidiary and signed a management contract just weeks before applying for an extension. There is no evidence that the petitioning entity has hired any employees, and there is some question as to whether the company ever had physical premises from which to conduct business, as the beneficiary's residential address and work site address, as indicated on Form I-129, are the same. The petitioner has provided no explanation for the apparent 11-month delay in commencing operations. It is evident that the petitioner was not prepared to commence doing business upon approval of its initial new office petition as required by the regulations. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

Another issue not acknowledged by counsel on appeal is the petitioner's failure to submit evidence of its ownership, and thus, its failure to establish that it maintains a qualifying relationship with the foreign entity. On Form I-129, the petitioner referred to a "joint venture" between the petitioner and the foreign entity, and also referred to the foreign entity as its affiliate. The foreign entity appears to be a partnership owned by the beneficiary and another individual. The director specifically requested documentary evidence of the ownership of the petitioning company, but the petitioner neglected to respond to this request. Again, 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).

The petitioner has not submitted any evidence on appeal to overcome the director's multiple grounds for denial of the petition. Therefore, the petition will be denied and the appeal dismissed for the reasons stated by the director, 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. 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.