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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 06 172 52964 Office: VERMONT SERVICE CENTER Date: AUG 27 2008

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 states that it is engaged in the cargo and storage business. It seeks to extend the employment of the beneficiary as its administrative services manager pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The U.S. petitioner, a corporation organized in the Commonwealth of Virginia, claims to be the subsidiary of [redacted], located in Lima, Peru. The petitioner seeks to extend the beneficiary's stay in the United States for an additional year.

The director found the initial evidence submitted with the petition to be insufficient to warrant approval. Consequently, a request for evidence was issued on September 12, 2006. In that request, the director noted that the petitioner had failed to sufficiently describe the beneficiary's duties, thus rendering it impossible to conclude that the beneficiary would be employed in a qualifying capacity. Consequently, the director requested additional evidence pertaining to the beneficiary's position, as well as a comprehensive statement regarding the staffing of the U.S. operation. The director also requested evidence to demonstrate that the petitioner and the foreign entity maintained a qualifying relationship, as well as evidence that the petitioner was doing business as required by the regulations.

In a response dated December 7, 2006, the petitioner addressed the director's requests. The petitioner submitted a brief description of the beneficiary's duties, and submitted an organizational chart showing that the beneficiary would oversee a secretary as well as an employee in logistics and an employee in accounting. Although it provided a Form W-4, Employee's Withholding Allowance Certificate, for [redacted] the petitioner's alleged secretary, no additional payroll records or other documentation was provided as proof that she and the other two employees had commenced working for the petitioner. The petitioner further claimed that it was in the process of recruiting truck drivers, and submitted a copy of an advertisement which provided the details of the open positions.

Regarding the issues of whether a qualifying relationship exists and whether the petitioner is in fact doing business, counsel for the petitioner referred to Exhibits 5, 6, 7 8, and 9. Specifically, counsel claimed that these exhibits show the ownership of both the US and foreign entities, and also demonstrate that both companies are doing business as required. It is noted that upon review of the response, there are no such exhibits.

On May 18, 2007, the director denied the petition. The director found that based upon review of the evidence in the record, the petitioner had failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. Moreover, the director noted that the petitioner had failed to submit documentary evidence of the continued qualifying relationship between the petitioner and the foreign entity, and likewise failed to submit evidence that the petitioner was doing business.

On appeal, counsel for the petitioner indicated on Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to address the director's denial within 30 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 states:

> The beneficiary was applying for extension of an L-1 as an administrative manager. The denial was based on the petitioner's failure to show that he was an executive. The decision is not consistent with the evidence. The evidence shows that the beneficiary was discharging the duties of an administrative manager engaged in establishing the company's U.S. operations.

The director did a thorough analysis and specifically discussed the deficiencies in the evidence in his decision. Counsel's general objections on the Form I-290B, 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 director outlined the deficiencies in the petitioner's evidence and specifically noted that the overview of the company's staffing, in light of the claim that it is a cargo business, did not support a finding that the beneficiary would be engaged primarily in qualifying managerial or executive duties.

Moreover, despite the director's specific requests for additional evidence pertaining to the qualifying relationship of the entities as well as evidence that the petitioner was doing business as required, the director noted that the petitioner failed to submit evidence in support of these requirements. 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). Although it is noted that both the petitioner and counsel claim that the requirements for both of these elements have been met, these claims are not corroborated by any documentation. 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)).

The AAO notes that on Form I-290B, counsel failed to address the issues of qualifying relationship and doing business, and provided a very brief statement addressing the director's findings with regard to the beneficiary's qualifications as a manager or executive. On August 1, 2008, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had been received in this matter and requested that counsel 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. As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, any erroneous conclusion of law or statement of fact on the part of the director. 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.

ORDER: The appeal is summarily dismissed.