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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D7

DATE: JUN 2 9 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed this nonimmigrant petition to classify the beneficiary 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 Florida corporation, states that it operates as an international broker, freight forwarder, logistics and in-land transportation provider. It claims to be a subsidiary of [redacted] located in Brazil. The beneficiary was previously granted L-1A status from January 20, 2009 until January 19, 2010 in order to open the new office in the United States as the company's director of operations. The petitioner seeks to extend the beneficiary's status for two additional years.

After allowing the petitioner an opportunity to submit additional evidence, the director denied the petition on April 1, 2010 based on a finding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director observed that the petitioner failed to submit any of the documentation requested in the request for evidence issued on February 1, 2010, but instead submitted a request for 30 additional days in which to submit the evidence.[1]

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. On appeal, former counsel for the petitioner submits the evidence that the director requested in her request for evidence dated February 1, 2010.[2] Counsel asserts the petitioner "could not obtain all of the proper paperwork within the allotted time due to the fact that it was the middle of tax season." This evidence includes the petitioner's IRS Forms 1120, 940, 941 and 1099 for 2009, an organizational chart for the United States company, copies of the beneficiary's paycheck stubs reflecting her earnings for the period November 2009 through April 2010, and photographs of the petitioner's business premises.

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.

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[1] The regulation at 8 C.F.R. § 103.2(b)(8) bars U.S. Citizenship and Immigration Services (USCIS) from granting an extension of time in which to respond to a request for evidence. The record reflects that the director properly advised the petitioner in the request for evidence that no extension of time for submission of the response could be granted.

[2] On June 14, 2011, the petitioner informed the AAO that its attorney of record, [redacted] had her [redacted] suspended until further notice pursuant to a court order issued on February 22, 2011. The AAO notes that [redacted] as of this date, is a member in good standing of the [redacted]r and not currently suspended or barred from practice before USCIS. However, the petitioner indicates that it currently has no legal representation and as such will be considered to be self-represented.

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.

The AAO concurs with the director's decision and affirms the denial of the petition. On appeal, the petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The appeal is essentially an attempt to submit a late response to the request for evidence issued on February 1, 2010. The director correctly concluded that the petitioner failed to submit the required statement describing the staffing of the new operation, including the number of employees and types of positions or the required accompanying evidence of wages paid to employees. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The petitioner's initial evidence pertained primarily to the operations of the petitioner's parent company and was insufficient to establish that the U.S. company had grown to the point where it could support a managerial or executive position.

The AAO cannot grant the request to review the late response to the RFE on appeal. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. *See* 8 C.F.R. §103.2(b)(8) . The 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).

A petitioner may submit additional evidence in support of an appeal in accordance with the instructions to Form I-290B and the regulation at 8 C.F.R. § 103.2(a)(1). Where the director, as in the present matter, put the petitioner on notice of a deficiency in the evidence and gave the petitioner an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have timely submitted it in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the evidence submitted on 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 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.