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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

D7

[redacted]

Date: SEP 1 1 2012 Office: CALIFORNIA 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:

[redacted]

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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must 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, California Service Center, revoked the non-immigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company providing cold storage and export services that obtained a non-immigrant visa for the beneficiary as an 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) on May 24, 2009.

Subsequent to the approval of the petition, USCIS conducted two administrative site visits at the petitioner's purported business address on June 19, 2009 and July 15, 2009 and found the following: (1) that no employees, including the petitioner, were present at the office location during either site visit; (2) that the petitioner's suite appeared to be shared with two other companies; and (3) that an employee from another company sharing the suite with petitioner stated that he had never heard of the beneficiary.

Based on the aforementioned information, the director issued a Notice of Intent to Revoke to the petitioner on November 26, 2010 in accordance with 8 C.F.R § 214.2(l)(9)(iii) reasoning: (1) that the petitioner was not doing business consistent with 8 C.F.R § 214.2 (l)(1)(ii)(H); and (2) that the beneficiary was not employed in an executive or managerial capacity pursuant to 8 C.F.R. § 214(l)(3)(ii). The petitioner was accorded thirty (30) days from the receipt of the Notice of Intent to Revoke to submit additional evidence or arguments to the director for consideration, but did not respond. As a result of the petitioner's failure to respond, the director revoked the non-immigrant petition on February 9, 2011.

Counsel for the petitioner claims that the director erred in concluding the petitioner was not doing business and submits additional evidence on appeal purporting that the beneficiary works remotely during Chinese business hours, thus explaining his lack of presence in the office during the site visits. However, this evidence cannot be accepted by the AAO on appeal. Consistent with 8 C.F.R. § 103.2(b)(13), the petitioner abandoned the petition by not responding to the director's Notice of Intent to Revoke with additional evidence or arguments within thirty-three (33) days of receipt.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given 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 submitted it in response to the director's Notice of Intent to Revoke. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Counsel's also claims that the petitioner's due process rights were violated. Counsel contends that "...relying on a random person's unsubstantiated claims to revoke the petitioner's petition is clearly untenable and violat[ed] the petitioner's due process rights." The AAO finds this argument to be non-persuasive.

The instructions to the Form I-129 (rev. June 12, 2009), at page 23, notify the petitioner of "USCIS Compliance Review and Monitoring." The instructions state:

> The Department of Homeland Security has the right to verify any information you submit to establish eligibility for the immigration benefit you are seeking *at any time*. Our legal right to verify this information is in 8 U.S.C. 1103, 1155, 1184, and 8 CFR parts 103, 204, 205, and 214. To ensure compliance with applicable laws and authorities, USCIS may verify information before or after your case has been decided.
>
> Agency verification methods may include, but are not limited to: review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic submission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. Information obtained through verification will be used to assess your compliance with the laws and to determine your eligibility for the benefit sought.
>
> Subject to the restrictions under 8 CFR part 103.2(b)(16), you will be provided an opportunity to address any adverse or derogatory information, that may result from a USCIS compliance review, verification, or site visit . . . .

(Emphasis in original.)

Although the counsel argues that the petitioner's rights to procedural due process were violated, he has not shown that there was any violation of the regulations resulting in "substantial prejudice" to the petitioner. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The Notice of Intent to Revoke was issued for good and sufficient cause based on material discrepancies discovered during administrative site visits that called into question whether the petitioner was doing business consistent with 8 C.F.R. § 214.2(l)(1)(ii)(H); and employed in an executive or managerial capacity pursuant to 8 C.F.R. § 214(l)(3)(ii). A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case by issuing a Notice of Intent to Revoke based on the information obtained from the site visits. Consistent with 8 C.F.R. § 103.2(b)(16)(i), the petitioner was provided with an opportunity to rebut any derogatory information stated in the Notice of Intent to Revoke and present information on their behalf before a final decision was rendered by the director. Petitioner did not offer arguments against, or present any additional evidence, to rebut the derogatory information specified in the notice. Therefore, the petitioner has fallen far short of showing substantial prejudice.

Generally, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). In the present case, the AAO finds the issuance of the Notice of Intention to Revoke proper, and thus will uphold the director's decision based on the petitioner's failure to respond.

Finally, the AAO notes that with respect to any constitutional due process challenge to a USCIS action, the AAO has no authority to entertain such a challenge. *Cf. Matter of Salazar-Regino*, 23 I&N Dec. 223, 231 (BIA 2002) (collecting cases).

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 satisfied that burden.

ORDER: The appeal is dismissed.