(b)(6)

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

DATE: DEC 19 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 employ 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, an Illinois corporation established in March 2009, states that it engages in manufacturing and distribution of industrial wire and cable. The petitioner claims to be a subsidiary of located in Germany. The petitioner seeks to employ the beneficiary in the position of "Key Account Manager – International" for a period of three years.

The director denied the petition on two alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge; and (2) that the beneficiary would be employed primarily in a qualifying managerial or executive capacity in the United States. In denying the petition, the director emphasized that the petitioner failed to provide requested evidence, including detailed position descriptions for the beneficiary's current foreign and proposed U.S. positions, organizational charts for the petitioner and foreign entity, and information regarding the beneficiary's current and proposed subordinate staff, including their job duties and educational levels. As such, the director found the record insufficient to establish that the beneficiary has been or would be primarily engaged in the supervision of managerial, supervisory or professional employees or that he has been or would be otherwise employed in a qualifying managerial or executive capacity.

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.

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.

The 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 agrees with the director's decision and will affirm 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. In fact, the petitioner has not raised any objection to the director's decision, but instead indicates that it is submitting the additional required evidence mentioned in the notice of denial.

The submitted evidence was previously requested by the director and will not be considered in this proceeding. The appeal will be summarily dismissed.

On April 4, 2013, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). Specifically, the director requested, *inter alia*, (1) a detailed specific description of the beneficiary's duties abroad and proposed duties in the U.S., including the percentage of time required to perform each of the listed tasks; an organizational chart for the foreign entity and the U.S. company; and (3) information on the beneficiary's subordinates abroad and in the U.S., including name, position title, summary of duties, education level, and salary. In response, the petitioner failed to provide the requested evidence. Instead, the petitioner submitted a vague resume for the beneficiary that did not identify his current position at the foreign entity or a clear statement of his duties, and a duplicate copy of a letter submitted with the petition from the foreign entity simply stating that he has been employed by the foreign entity since September 1, 2007 and that he "is the head of our sales office and in addition key account manager for corporate customers." The letter also stated that the beneficiary worked more than 15 years as a purchasing and ales manager in the cable and wire industry. The director denied the petition after noting that the petitioner failed to submit the requested evidence and as such, could not determine that the beneficiary was employed at the foreign entity in an executive or managerial capacity.

The director correctly found that such information was critical to the petitioner's claim that the beneficiary has been employed abroad and will be employed in the United States in a qualifying managerial or executive capacity. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner failed to document what proportion of the beneficiary's duties has been allocated to managerial functions and what proportion has been non-managerial. The petitioner provided a very broad and vague list of job duties on the Form I-129 and failed to provide details or quantify the time amount of time the beneficiary spends on specific tasks. This failure of documentation is important because the missing detail and information is critical to establishing the beneficiary's eligibility for the benefit sought. For this reason, the petitioner has not established that the beneficiary is primarily performing the duties of manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, the director emphasized that the petitioner failed to provide requested information regarding the job duties of the beneficiary's claimed subordinates, thus preventing any further inquiry as to whether the employees relieve him from performing non-qualifying duties, or whether the employees are actually managers, supervisors or professionals. This information was also critical because the beneficiary's vague position description did not clarify how or whether his subordinates would relieve him from performing non-qualifying operational and administrative tasks.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit

requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

On appeal, the petitioner states that it is sending additional information to document and prove that the beneficiary was an executive abroad and will be employed in an executive capacity in the United States. The petitioner clearly indicates that it is submitting this information on appeal in response to the director's decision. The petitioner now submits a new, expanded position description and organizational chart for the beneficiary's position abroad and in the United States, and a list of the beneficiary's subordinates at the foreign entity, only including name, time with the company, and educational level. The petitioner contends that, based on this evidence, it has met its burden to establish that the beneficiary performs primarily in an executive capacity abroad and will perform primarily in a executive capacity in the United States.

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 the documents in response to the director's request for evidence. *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.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As the petitioner fails to identify with specificity an erroneous conclusion of law or a statement of fact on the part of the director as a basis for the appeal, the petitioner has not sustained that burden.

The petitioner is not precluded from filing a new visa petition that is supported by the required evidence that the beneficiary is entitled to the status sought under the immigration laws.

ORDER: The appeal is summarily dismissed.