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

(b)(6)

DATE: MAR 29 2013 OFFICE: VERMONT SERVICE CENTER

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:

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,

Ron Rosenberg
Acting 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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as a 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 is engaged in supermarket stores and gas stations. The petitioner claims to be a subsidiary of [redacted] located in the Sultanate of Oman. The petitioner seeks to employ the beneficiary as CEO for a period of one year.

On July 16, 2012, the director denied the petition concluding that the petitioner failed to establish that the beneficiary has been or will be employed in either a managerial or an executive capacity. In denying the petition, the director found that the description of the beneficiary's duties at the foreign entity are vague and do not demonstrate that the beneficiary was employed in an executive capacity nor in a managerial capacity as he was not supervising professional, supervisory, or managerial employees. The director also found discrepancies presented in the record relating to the beneficiary's subordinates at the foreign entity. The director further found that the beneficiary's duties at the U.S. company are also vague and do not demonstrate that he will be an executive or a manager of a subordinate staff that is professional, supervisory, or managerial.

On August 16, 2012, the petitioner submitted the Form I-290B, Notice of Appeal or Motion, to appeal the denial of the underlying petition. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. The petitioner marked the box at part two of the Form I-290B to indicate that a brief and/or additional evidence is attached.

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 the 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.

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. 8 C.F.R. § 103.3(a)(1)(v).

On appeal, counsel for the petitioner submits a one-page brief that states:

> We seek to appeal the decision denying the petitioner's L1.
>
> [redacted] owns four businesses; a convenience store, a [redacted] a shell gas station and a chevron gas station. [redacted] will be headed up by the beneficiary who will oversee all operations. The beneficiary will take over running the business from his brother, [redacted] who has end stage diabetes and can no longer work.

An organizational chart was submitted documenting the number of total employees throughout [redacted] Please also find an employee contact list.

Overseas the beneficiary works for a family business. He oversees 30 staff which work in the warehouse. He has authority to hire and fire. He evaluates personnel and he assures the personnel are completing their responsibilities including maintaining inventory necessary to the import/export business.

We believe that based on the evidence supplied we have shown that the beneficiary will work in an executive capacity and has and will continue to oversee a significant number of staff.

Counsel for the petitioner also submits an employee contact list for the U.S. company and what appear to be medical records for [redacted]

In the instant matter, neither counsel nor the petitioner has specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Counsel's assertions that the beneficiary's position abroad is managerial and the beneficiary's position at the U.S. company will be in an executive capacity is not sufficient for an appeal. The director's decision includes a thorough discussion of the evidentiary deficiencies and inconsistencies present in the record. Counsel's brief statement on appeal fails to acknowledge these discrepancies and inconsistencies. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591 (BIA 1988).

As no erroneous conclusion of law or statement of fact has been specifically identified and as no additional evidence is presented on appeal to overcome the inconsistencies addressed in the director's decision, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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. Here, the petitioner has not met that burden.

ORDER: The appeal is summarily dismissed.