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)

APR 2 4 2014

DATE: 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:

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 extend the beneficiary's classification 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 July 2010, states it operates an "information technology" business. The petitioner claims to be a branch of Ltd., located in India. The petitioner seeks to extend the beneficiary's employment as its CEO for a period of two years.

On May 6, 2013, the director denied the petition concluding that the petitioner failed to establish that the beneficiary is employed in a position that is primarily executive or managerial in nature. In denying the petition, the director found that the description of the beneficiary's position in the United States was insufficient to demonstrate what the beneficiary does on a day-to-day basis. The director found: "[b]ased on the organizational structure provided, it appears the U.S. position of CEO is primarily assisting with the day[-]to[-]day non-supervisory duties of the business." The director determined that the performance of those tasks precludes the beneficiary from being considered a manager or executive. The director further found that the record did not establish that the beneficiary's subordinates are occupying positions that are managerial, supervisory, or professional in nature. The director determined that the petitioner failed to establish that the U.S. company has an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees.

On June 10, 2013, the petitioner submitted a 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 will be submitted to the AAO within 30 days. The AAO received the petitioner's evidence on July 11, 2013 and will consider the record complete as presently constituted.

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.

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.

On appeal, counsel for the petitioner included the following statement on the Form I-290B:

> USCIS, as a matter of fact and as a matter of law erred while adjudicating the request for the extension of L-1 intracompany transferee worker who has been in the U.S. for the last one year. Due to his guidance and experience the company has started growing up and contributing in the U.S. economy.
> Please find in detail the facts about the matter presented in the brief which will be submitted in 30 days.

In support of the appeal, counsel for the petitioner submits a one-page brief making the following relevant statements:

> [The beneficiary] is an entrepreneur who owns a parent company in India which has employed more than 581 employees and earns a revenue of about 217 million dollars a year. [The petitioner] is subsidiary of the parent company in India and [the beneficiary] has been employed as CEO since 02/05/2012.
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> * * *
>
> While adjudicating the application for the extension of L-1 Status for [the beneficiary] as the CEO, the USCIS did not pay attention to the fact that it was a start-up business and the owner of the business besides working as CEO would take on multifarious assignments to make the business a success. These additional assignments do not preclude him to be a CEO.
>
> Henceforth we reiterate that [the beneficiary] has been working as CEO and his job duties justify his position as CEO.

In support of the appeal, the petitioner submits a letter dated March 27, 2013, a second letter dated February 8, 2013 (which appears to be a rough draft of the March 27, 2013 letter), a resolution memo of the foreign entity, dated July 26, 2010, a copy of stock certificate number one issued to the foreign entity, its 2011 IRS Form 1120, U.S. Corporation Income Tax Return, copies of its 2012 IRS Forms W-2, Wage and Tax Statement, for four different employees, copies of its 2012 IRS Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, for the third and fourth quarters of 2012, its organizational charts and lists of job duties for the beneficiary's subordinates: executive assistant to CEO, vice president, executive assistant to VP, and executive back office management. All of the above listed evidence was previously submitted in response to the RFE.

The petitioner also submits the following new evidence on appeal:

- A resolution memo of the U.S. company, dated July 29, 2010, appointing Mr. as director of the company.
- A resolution memo of the U.S. company, dated August 2, 2010, authorizing director of the company, to purchase or otherwise acquire property on behalf of the company, to negotiate, sign, and execute contracts on behalf of the company, to insure all or any part of property or business on behalf of the company, and to represent the U.S. company.

- A second resolution memo of the U.S. company, dated August 2, 2010, authorizing the beneficiary, as director, to conduct business with the Chicago on behalf of the U.S. company.

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. The petitioner fails to specifically address the director's ground for denial of the underlying petition, and simply submits duplicate copies of documents already in the record. The director's decision includes a thorough discussion of the evidentiary deficiencies and inconsistencies present in the record. The petitioner's statement and additional evidence submitted on appeal fails to acknowledge these deficiencies and inconsistencies.

Here, counsel for the petitioner states that the petitioner is a start-up business and that the beneficiary would not only be the CEO, but would also be required to take on additional duties in order for the business to thrive. However, the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). The petitioner has failed to submit a detailed description of the beneficiary's duties in order to establish that he is primarily employed in a managerial or executive capacity.

On appeal, the petitioner submitted identical evidence already contained in the record, which the director reviewed in reaching her decision. The only new evidence submitted is the petitioner's three resolution memos appointing one director, and authorizing the beneficiary, as director, to act on behalf of the U.S. company. It appears that the newly submitted resolution memos are an attempt to show that the beneficiary is an executive at the U.S. company. However, the petitioner has not provided sufficient information detailing the beneficiary's duties at the U.S. company to demonstrate that these duties qualify him as a manager or executive. The beneficiary's title and authority, without any detailed description of his daily duties, are insufficient to establish that he is an executive or manager at the U.S. company. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. 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 decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.