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: AUG 28 2014 OFFICE: VERMONT 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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, 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 established in December 2012, states that it will engage in a tourism related service, travel agency, and the sale and delivery of precision cutting machines. The petitioner claims to be a subsidiary of located in Brazil. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition based on the petitioner's failure to properly complete the Form I-129, as required by 8 C.F.R. § 103.2(b)(1). In denying the petition, the director found that the petitioner failed to provide a response at page 5, Part 6 of the Form I-129, which is required for all Forms I-129 filed on behalf of H-1B, H-1B1 Chile/Singapore, L-1, and O-1A classifications on or after February 20, 2011.[1] The director issued a request for evidence advising the petitioner of this requirement and an instruction to complete and submit page 5, Part 6, Question 1 or 2, of Form I-129 with a revision date of November 23, 2010 or later. In response to the RFE, the petitioner failed to acknowledge said instruction from the director and failed to submit the required response, thus rendering the petition incomplete.

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, new counsel for the petitioner acknowledges that the Form I-129 prepared by former counsel was incomplete. The petitioner submits a new, completed Form I-129 in support of the appeal and explains that the denial was based on a clerical error that was outside the petitioner's control.

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.

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[1] By completing Part 6 of the form, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and determined whether it will require a U.S. government export license to release controlled technology or data to the beneficiary. By signing the Form I-129, the employer certifies under penalty of perjury that the information provided on the form is true and correct.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. The petition was properly denied based on the petitioner's failure to complete page 5, Part 6 of the Form I-129, pursuant to 8 C.F.R. § 103.2(b)(1). In addition, the Form I-129 instructions state, "If you do not completely fill out the form . . . you will not establish a basis for eligibility and we may deny your petition." *See also* 8 C.F.R. § 103.2(a)(1) (incorporating the instructions into the regulations). The petitioner was given an opportunity to submit a completed Form I-129 prior to the denial of the petition and did not do so.

On appeal, counsel for 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, counsel for the petitioner has not raised any objection to the director's decision or asserted that the petition was denied in error. Rather, counsel acknowledges that the Form I-129 was incomplete as filed. Accordingly, the appeal will be summarily dismissed.

Although the appeal will be dismissed, we acknowledge the petitioner's attempt to submit a new completed Form I-129 on appeal. On March 6, 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, in part, that the petitioner complete and submit Page 5, Part 6, Question 1 or 2, of Form I-129 with a revision date of November 23, 2010 or later. Although the petitioner submitted a response to the director's request for evidence, neither former counsel nor the petitioner acknowledged or responded to the request to submit a complete page 5 of the Form I-129. 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).

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 completed Form I-129 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.

Counsel asserts:

> The improper completion of the form was neither the petitioner nor the beneficiary's error, but the error of the person preparing the initial petition. Both the petitioner and beneficiary have been prejudiced because they have both shown their eligibility independently of the clerical error."
>
> The beneficiary spoke to an USCIS officer who indicated that she write a letter explaining the facts and outlining the error of the prior person preparing the petition. This letter of explanation is to facilitate the reviewing process so that USCIS can note that the denial of the original petition is based on a careless clerical error and not based on the eligibility of the parties.

Counsel for the petitioner now concedes that the initial Form I-129 was not complete, but indicates that it was a clerical error on the part of the person preparing the form. Although the Form I-129 was accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the petitioner's former counsel is not the person who signed the form as its preparer. In the event that the form was not prepared by an

accredited attorney or representative, we note that there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Hernandez v. Mukasey,* 524 F.3d 1014 (9th Cir. 2008) ("non-attorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims"). USCIS only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).[2]

As the petitioner has identified no erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal, 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.

[2] The record reflects that the petitioner was previously represented by a member of the Virginia State Bar. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has not established that any of these requirements have been met.