U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 2 7 2014 OFFICE: VERMONT SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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, 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 visa petition seeking to classify the beneficiary as an L-1A intracompany transferee employed pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation established in 2010, states that it operates a security academy. The petitioner claims to be a branch of The petitioner seeks to employ the beneficiary as president/director of its new office for a period of seven years.[1]

The director denied the petition, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer; (2) that the petitioner has secured sufficient physical premises for the new office; (3) that the beneficiary was employed in a managerial or executive capacity with the foreign entity; or (4) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner subsequently filed an appeal accompanied by a brief letter and additional evidence. 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. A petitioner seeking approval of a petition involving a "new office" must submit evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(l)(3)(v).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

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[1] The director determined that, although the petitioning company was incorporated in Florida in 2010, it did not establish that it had been doing business for one year as of the date of filing. Accordingly, the director determined that the petitioner is a "new office" as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(*3*), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

> 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 concurs with the director's decision and affirms the denial of the petition. The petitioner's brief statement in support of the Form I-290B, Notice of Appeal or Motion, fails to identify specifically any erroneous conclusion of law or statement of fact as a basis for the appeal. Therefore, the appeal will be summarily dismissed.

The petitioner provided the following statement in support of the appeal:

> 1. **Ovner [*sic*] history**:
>
> . . . . Although the two companies is the majority owner. and the two companies with the same activity deals with representative or the PSA's in Hungary and also in the U.S.: Retail, education, examination, graduation, exhibition.
>
> **2. [The petitioner] History:**
>
> The company 2010th januar8 [*sic*]. was founded, the company operated as the Florida Department of State Division of Corporations immediately active status was therefore always worked, did not it was introduced in 2012 full of years. So far the company's three-year history already.
>
> **3. President is responsible for:**
>
> - organized by the company's structure
> - interviewing
> - professional training for the control
> - training courses for the instructor to
> - professionally manage the sales representative
> - training courses for the sales representative
>
> **4. Office**
>
> Exclusive at the office, because quality management is required. The new customers to visit the office and the first impression is very important and the only way we can solve. The training for 2012 was held on the client site
>
> **5. Investment**
>
> Submitted by investing in evidence, of which he questioned the need, the diving equipment is important in its own equipment instructors teach the lessons in Rental Equipment, a special camera is important to record the trainings under water.

The director provided a thorough analysis and specifically discussed the deficiencies in the petition and evidence when issuing the denial. The director explained why the evidence submitted failed to establish eligibility denied the petition based on four independent and alternative grounds.
The petitioner's general statements on appeal raise no specific objections to the director's findings. In fact, the petitioner does not acknowledge the director's findings that the petitioner failed to establish the beneficiary's managerial or executive employment abroad; that the petitioner failed to establish that it would hire employees to relieve the beneficiary from performing non-qualifying duties within one year of the petition's approval; or that the petitioner failed to provide evidence of the financial status of the foreign entity.

As the petitioner has not specifically identified any errors on the part of the director, the brief statement provided is simply insufficient to overcome the well-founded conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is noted that the petitioner requests consideration of the following evidence submitted in support of the appeal: (1) two share transfer agreements dated August 31, 2011; (2) its IRS Form 1120, U.S. Corporation Income Tax Return for 2012; and (3) photographs of the petitioner's office space. The petitioner's statement also includes a brief list of duties for the beneficiary's proposed position as president.

The director issued a request for evidence ("RFE") on February 7, 2013. The director notified the petitioner that the initial evidence was insufficient to establish that the U.S. operation had been doing business for a least one year prior to filing the petition and would therefore be considered a "new office" for immigration purposes. The director advised the petitioner that to overcome classification as a "new office" it must submit additional evidence that the U.S. entity had been engaged in the regular, systematic, and continuous provision of good and services for at least one full year.

The RFE also notified the petitioner that the initial evidence was insufficient to establish that the company in the United States would grow to be of a sufficient size to support a managerial or executive position, and requested evidence that the beneficiary, within one year, will be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service. The director also requested evidence to establish that the beneficiary will function at a senior level in the organizational hierarchy, or that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel to relieve him from performing non-qualifying duties.

The director noted that the petitioner submitted a list of items that the petitioner claims were investments into the U.S. entity including vehicles, diving equipment and camera equipment that may or may not be business related. The director requested specific evidence of the size of the investment into the company.

The RFE also informed the petitioner of inconsistencies noted in the record. The director noted that the share certificates indicate that the beneficiary owns 5,100 shares and another individual owns 4,900 shares of the U.S. entity's 10,000 shares of issued stock. However, the same certificates indicate in the written body of text that each individual owns 5,000 shares of the U.S. entity. Finally, regarding the lease, the director informed the petitioner that the lease agreement it provided was for a residential apartment, and did not indicate that the U.S. entity secured sufficient premises for the proposed business function of operating a security training academy. The director requested that the petitioner provide additional evidence to resolve all of these deficiencies and inconsistencies.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has not submitted any evidence on appeal that was not already requested by the director prior to the denial of the petition.

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.

Even if the evidence provided on appeal were considered, it lacks probative value to overcome the director's findings. The petitioner submits an IRS Form 1120 for 2012 indicating that its annual income was $146,393. In order to overcome the director's determination that the petitioner is a "new office," the petitioner must establish that it was doing business as defined at 8 C.F.R. § 214.2(l)(1)(ii)(H) since on or before February 4, 2012. While the tax return indicates that the company was doing business in 2012, it provides insufficient evidence of the company's continuous business activities or the date on which the company started doing business, especially in light of the fact that the petitioner reported no income in 2011. Absent documentary evidence of business transactions, the AAO cannot determine when the petitioner started doing business in a regular, systematic and continuous manner. As such, this evidence does not overcome the director's determination that the petitioner must be considered a new office as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

In determining that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity, the director noted that the evidence did not establish that the beneficiary would supervise a staff of professional, supervisory or managerial employees or that subordinate employees would relieve the beneficiary from performing non-managerial duties.

On appeal the petitioner provides an additional position description, but fails to address any of the director's concerns regarding the sufficiency of the petitioner's hiring plans and the presence of subordinate employees to relieve him from performing the company's non-qualifying duties within one year.

Likewise, the petitioner's appeal includes a brief statement regarding the necessity of investing in diving equipment and cameras for the U.S entity, but fails to address the director's finding that record lacks evidence to establish that the investment was actually made and/or the specific amount that was actually invested into the U.S. entity. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*).

Similarly, the photographs and share agreements submitted on appeal fail to resolve the inconsistencies noted in the director's denial, and introduce additional inconsistencies into the record which cast further doubt on the petitioner's claims.

A discussed above, the director issued an RFE notifying the petitioner of inconsistencies in the U.S. entity's stock certificates and requesting evidence to resolve the U.S. entity's ownership. In denying the petition, the director noted that the petitioner had failed to provide additional evidence to establish share ownership or resolve the discrepancies in the stock certificates. On appeal, the petitioner submits two share transfer agreements; however, the documents are not consistent with documentation provided previously. The transfer agreements state that the purchase price for 1% of the company is $1,000, while the previously submitted articles of incorporation and share certificates indicate that the company issued 10,000 shares of common stock at $.01 per share.

Additionally, the share transfer agreements provided on appeal are dated August 31, 2011, whereas both stock certificates are dated January 20, 2010, and a separate share certificate transfer document provided in response to the RFE is dated April 4, 2012. The inconsistencies in the dates and the purchase price of the shares make the credibility of the share transfer agreements questionable. Therefore, the transfer agreements are insufficient to explain or reconcile the inconsistencies in the stock certificates noted in the denial decision or to demonstrate the actual ownership of the U.S. entity. 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).

The director also observed that the petitioner failed to provide consistent evidence regarding the U.S. entity's physical premises. The director specifically noted that while the petitioner provided photographs of office space and classroom facilities, the lease agreement was for an apartment or residential property that did not appear to be sufficient premises for the claimed business function and that did not correspond with the photographs provided. On appeal the petitioner claims that training sessions were held at a client site in 2012; however, it fails to submit any evidence to support its claims.

Instead, on appeal, the petitioner provides a different set of photographs omitting the previously provided classroom photos and including photos that only depict the claimed office space. The petitioner appears to claim on appeal that new customers visit the office and that the first impression

is very important. It is noted however, that the lease specifically states that "a lawful business conducted 'at home' by computer, mail or telephone is permissible if customers, clients, patients or other business associates do not come to the Premises for business purposes." Furthermore, it is noted that the photographs purporting to show the door to the U.S. entity's office space include a sign with the petitioner's name incorrectly spelled ' The petitioner has not provided any evidence to resolve the inconsistent lease terms with the photographs or the company's claimed business function. Again, 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. at 591-92.

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.