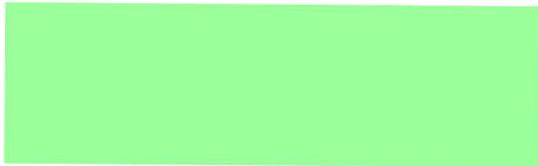
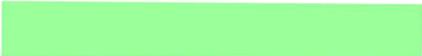


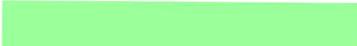


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 24 2014** Office: CALIFORNIA 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)

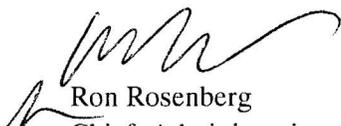
ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 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, a Washington corporation established in August 2011, states that it engages in a sales, marketing, and service business. The petitioner claims to be a subsidiary of [REDACTED]. The petitioner seeks to extend the beneficiary's employment as its branch manager for a period of three years.

On July 11, 2013, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed primarily in a qualifying managerial or executive capacity in the United States. In denying the petition, the director found that the beneficiary's listed duties are not consistent with those typically performed by someone in a managerial or executive position. The director found that the listed duties are more indicative of an employee who will be performing the necessary tasks to provide a service or to produce a product of the petitioner. The director observed that the organizational chart submitted shows that the beneficiary's position is primarily assisting with the day-to-day non-supervisory duties of the business. The director further observed that the evidence provided does not establish that a bachelor's degree or higher is actually necessary to perform the functions of any of the beneficiary's subordinates. The director finally found that the petitioner failed to establish that the U.S. business 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 August 29, 2013¹, the petitioner submitted a Form I-290B, Notice of Appeal or Motion (Form I-290B), 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. The AAO 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:

¹ The petitioner initially submitted its Form I-290B on August 8, 2013 directly to the AAO. The AAO returned the Form and all additional documents to the petitioner on August 9, 2013 advising the petitioner to properly file the Form I-290B with the appropriate office.

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, the petitioner included the following statement on the Form I-290B:

In order to explain more detailed beneficiary's duties for the previous year and duties to be performed under the extended petition, we have attached a Job Specification Letter and a Job Confirmation Letter. Both statements describe the beneficiary's managerial capacity and importance of the role of the beneficiary in the U.S. business operation. Also, we have attached updated Current/Proposed Organizational Chart, Employee List, and Form 941 to describe the staffing of the petitioning company including the number of employees, types of positions, evidence of wages paid, and duties of the beneficiary's subordinate employees.

In support of the appeal, the petitioner submits a "Job Specification Letter: Duties for the previous year," dated August 2, 2013, a "Job Confirmation Letter: Duties for the continuing position of Branch Manager," dated August 1, 2013, an updated "Current/Proposed Organizational Chart," an employee list, including a brief list of duties and number of hours devoted to each duty for each employee of the U.S. company, and its IRS Forms 941, Employer's Quarterly Federal Tax Return, for the second, third, and fourth quarters of 2012 and the first and second quarters of 2013.

In the instant matter, the petitioner has not 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, the petitioner submitted an almost identical copy of the "Job Specification Letter" submitted in response to the RFE and dated June 25, 2013. The "Job Confirmation Letter" is also almost identical to the same submitted in response to the RFE and dated June 20, 2013, except that the petitioner made some changes to the tasks listed under the "Lead and Coordinate Product Development" cluster. The organizational chart and employee list are also almost identical to those submitted in response to the RFE, except that the petitioner has added one additional "staff" position under the "general affairs team" subordinate to the beneficiary. The only new evidence submitted is the petitioner's Form 941 for the second quarter of 2013, which is not relevant in this proceeding as it has no bearing on the beneficiary's position at the time of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Although the petitioner has made some minor tweaks to the wording of some of the beneficiary's listed duties, those changes are not substantive.

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.