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APR 07 2005



File: EAC 03 152 52597 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its controller 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 is a corporation organized in the State of New York that is engaged in the wholesale and retail sale of jewelry. The petitioner claims that it is the subsidiary of [REDACTED] located in Mumbai, India. The beneficiary was initially granted a three-year period of stay in L-1A status and the petitioner now seeks to extend her stay for three more years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel does not specify any erroneous conclusions of law or statements of fact on the part of the director. Instead, counsel notes on Form I-290B that the denial rests on a conclusion that the petitioner failed to cover all of the information requested in the director's notice dated May 23, 2003. Counsel states that the petitioner attempted to respond with the required information, but "apparently misunderstood the degree of detail required." The petitioner submits a letter dated November 21, 2003 stating that, if inadequate detail was previously provided, "this was due to poor communication between management and the former immigration representative who prepared and submitted the petition and responses." The petitioner provides in its letter a description of the duties performed by the beneficiary and her subordinates. The petitioner also notes that its personnel have changed, and submits on appeal its organizational chart as of November 2003, and payroll records for the third quarter of 2003.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The director issued a request for evidence on May 23, 2003, in part instructing the petitioner to submit an organizational chart identifying the beneficiary's position and the job titles, duties, educational level, annual salary and immigration status of all of her subordinates; copies of W-2s for all of her subordinates; and a more detailed description of the beneficiary's duties, including the proportion of time she devotes to each duty. While the petitioner submitted a response received on August 18, 2003, the petitioner did not provide the requested line and block organizational chart, a description of duties and educational backgrounds of the beneficiary's subordinates, or the requested Forms W-2. In lieu of the organizational chart, the petitioner submitted a list of its thirteen employees by name and job title. As noted by the director, the petitioner indicated that the beneficiary supervises inventory managers, accountants, auditors and sales managers, but

did not include any employees with these job titles on its staff list. The petitioner now seeks to submit a new job description for the beneficiary, job descriptions for her subordinates, and an organizational chart on appeal.

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).

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.

Further, it is noted that all of the evidence submitted on appeal references the petitioner's staffing levels and the beneficiary's duties as of November 2003. While the petitioner indicates that the beneficiary supervises a shipping and receiving supervisor and two shipping and receiving clerks, there is no evidence that that the petitioner employed staff in these positions at the time of filing. 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. 1978).

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal will be summarily dismissed.

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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.