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U.S. Citizenship  
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Services

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FILE: WAC 03 255 54033 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2005

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)

ON 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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it is engaged in the import, export and wholesale of apparel. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director denied the petition based on the following conclusions: 1) the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in an executive or managerial capacity, and 2) the petitioner has not established the qualifying relationship between the U.S. and foreign entities. Specifically, the director determined that there is insufficient evidence on record of a subordinate staff of professional, managerial or supervisory personnel to relieve the beneficiary from performing non-qualifying duties. The director also determined that the record does not establish that the U.S. entity has the organizational complexity to support an executive position. The director's conclusion relating to the qualifying relationship between the U.S. and foreign entities is based upon a number of discrepancies in the record regarding the ownership of shares in the U.S. entity that the petitioner failed to reconcile.

On the Form I-290B appeal, counsel state the following as the reasons for appeal:

1. The beneficiary's duties are primarily executive or managerial
2. CPA's amended repore [sic] shows that mistakes ware [sic] made honestly in Form 1120 for 2002

In a letter accompanying the appeal, counsel further states:

The beneficiary's duties are primarily executive or managerial. Especially the petitioner is just a startup but growing steadily and planning to hire more staff in 2004, so its organizational chart will become more complicated soon. As the U.S. economy is recovering slowly, we sincerely request your kind considering the contribution made by multinational companies to American job market and give more time to the beneficiary herein to properly fulfill his job duties regarding expansion closely following up the initial startup. Meanwhile, the relevant regulation does not specially require a minimum staff number in an organization to support an L-1 petition and we believe the current employee number of petitioner is not so unreasonable under the circumstances mentioned above.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel simply claims on appeal that "the beneficiary's duties are primarily executive or managerial," without identifying any specific error in the director's decision on this issue. Counsel's assertion alone is insufficient

to overcome the director's properly reasoned decision. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Likewise, counsel's assertion that the petitioner intends to hire more staff in the future does not serve to substantiate the petitioner's eligibility. 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). Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in the regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Regarding the issue of whether the petitioner has sufficiently established a qualifying relationship between the U.S. and foreign entities, the AAO notes that the amended tax return referenced by counsel on appeal resolves only one of the discrepancies regarding the ownership of the U.S. entity enumerated by the director in his decision. The petitioner still has not reconciled the difference between the total amount paid for the U.S. entity's outstanding shares as stated on the stock ledger and the value of the outstanding shares as stated on the company's 2002 tax return, or explain how this affects the ownership of the U.S. entity. Moreover, the AAO notes that the wire transfers purportedly representing amounts paid by the foreign entity in connection with the purchase of shares in the U.S. entity are dated significantly after the date of the share purchase as indicated on the share certificates and ledger. There is no other documentation on record, such as a share purchase agreement, that would shed light on this discrepancy in date and confirm that the shares in question were indeed owned by the foreign entity as of the date the petition was filed. 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 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.

The AAO finds that on appeal, counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. Therefore, the appeal must 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.