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U.S. Department of Homeland Security
20 Massachusetts Ave., NW, Rm. 3000
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U.S. Citizenship
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File: EAC 07 074 52390 Office: VERMONT SERVICE CENTER Date: OCT 02 2007

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

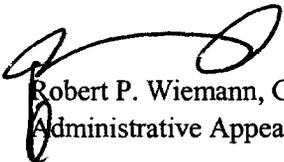
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Chief
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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to employ 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 Delaware corporation, is described as a computer parts manufacturer and supplier. It states that it is a subsidiary of [REDACTED], located in Taiwan. The petitioner seeks to employ the beneficiary as its project manager for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. The director observed that the beneficiary commenced employment with the foreign entity on December 1, 2005, but was admitted to the United States as a B-2 nonimmigrant visitor on September 6, 2006, remaining in the United States until the instant request for a change of status and extension of stay was filed on January 19, 2007. The director further noted that, pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A), periods of stay in the United States for business or pleasure are not interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement.

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, counsel for the petitioner asserts that "the denial of the petition was due to a mistake on the beneficiary's resume." Counsel asserts that the beneficiary has been employed by the foreign entity since December 2004, not since December 2005, as indicated on the initial petition and supporting documents. Counsel submits a letter from the petitioner's controller, [REDACTED] who also states that a mistake on the beneficiary's resume "led to a confusion during the initial application process." [REDACTED] states that the beneficiary has been employed by the foreign entity since December 1, 2004.

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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel has not identified an erroneous conclusion of law or statement of fact on the part of the director, and does not indicate that the decision was incorrect based on the evidence presented. Counsel essentially seeks to amend the petition on appeal in order to revise the beneficiary's employment dates with the foreign entity. Counsel's request to amend the petition on appeal is not properly before the AAO. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

Further, the AAO notes that the evidence submitted on appeal is insufficient to establish the beneficiary's dates of employment with the foreign entity. While the petitioner and counsel point to a mistake on the beneficiary's resume as the reason for the denial of the petition, the AAO notes that the petition and supporting documents included four separate documents indicating that the beneficiary commenced employment with the foreign entity in December 2005, including a letter from counsel, the L Classification Supplement to Form I-129, the beneficiary's resume, and a letter dated January 9, 2007, signed by the petitioner's controller, [REDACTED] who presumably reviewed the letter before signing it. The beneficiary's resume and the letters submitted in support of the petition indicate that the beneficiary was employed by an unrelated foreign company, [REDACTED], from June 2003 until December 2005, and this discrepancy has not been addressed.

In light of the above, the petitioner's and counsel's assertions that the beneficiary commenced employment with the foreign entity on December 1, 2004 are not persuasive, absent corroborating documentary evidence such as the beneficiary's payroll records for a twelve-month period between December 1, 2004 and December 1, 2005. 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 petitioner has not submitted evidence on appeal to overcome the director's decision.

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 the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.