U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 08 231 50991 Office: CALIFORNIA SERVICE CENTER Date: NOV 18 2009

IN RE: Petitioner: [redacted]
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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, 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.[1]

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 California **corporation, intend**s to engage in the trade of gems and jewelry. The petitioner claims that it is a subsidiary of [redacted] located in Sri Lanka. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a period of two years.[2]

The director denied the petition on three independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the U.S. and foreign entities have a qualifying relationship; (2) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity; and (3) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner filed a Form I-290B, Notice of Appeal or Motion, on January 20, 2009, on which it provides the following statement:

> The USCIS failed to consider that the job duties are managerial since he was overseeing his employees. However, they did not appreciate the fact that once before the L-1 is approved the company had 3 employees and also planned to grow and hire more people in the future. Simply because initially he is overseeing them does not make his job duties non-managerial. Moreover, we have requested for the one year for the opening of the new office and [the beneficiary] would have gradually passed on most of work to them. Regarding the stocks certificate their [*sic*] has been some miss print [*sic*] and mistake which we are looking into and will send the corrected documents as soon as they are ready.

The petitioner indicated on the Form I-290B that it would submit a brief and/or additional evidence to the AAO within 30 days. Upon initial review of the record, the AAO found that no additional evidence had been incorporated into the record. Therefore, on November 9, 2009, the AAO attempted to contact the petitioner by facsimile in order to inquire whether the petitioner had submitted the brief and evidence within 30 days, and to allow the petitioner an opportunity to re-submit any timely filed evidence. There was no response at the petitioner's fax number. Accordingly, the record will be considered complete.

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[1] The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the individual who assisted the petitioner with preparation of the Form I-129 and Form-1-290B is not an attorney or an accredited representative.

[2] Pursuant to the regulation at 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.

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.

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. As noted above, the director denied the petition based on three independent and alternative grounds. On appeal, the petitioner has not identified specifically any erroneous conclusion of law or statement of fact with respect to two of these three grounds. Accordingly, the petitioner cannot overcome the director's findings with respect to all enumerated grounds, and the appeal will be summarily dismissed.

The first issue addressed by the director was the petitioner's failure to establish that the U.S. and foreign entities have a qualifying relationship, as required 8 C.F.R. § 214.2(l)(3)(i). The director addressed multiple discrepancies in the evidence submitted and determined that the evidence did not support the petitioner's claim that it is a subsidiary of the foreign entity. In denying the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence failed to meet the regulatory requirements for this visa classification.

The AAO concurs with the director's conclusion that there are serious unresolved discrepancies in the record with respect to the petitioner's ownership and control. The petitioner stated on Form I-129 that it is a subsidiary of [redacted] Elsewhere, the petitioner indicates that the foreign entity is [redacted] but provided no explanation for the two different company names. The petitioner submitted a copy of its articles of incorporation, which indicate that the U.S. company is authorized to issue 1,000,000 shares of common stock. According to the petitioner's Unanimous Written Consent in Lieu of First Meeting of the Board of Directors, the petitioner issued 55,000 shares of common stock to "Gemstones" in exchange for $0.00. Despite the director's request for copies of all of the U.S. company's stock certificates, the petitioner's stock ledger, a detailed list of owners, and evidence to establish that the foreign entity paid for its stock purchase, the petitioner has submitted a copy of a single stock certificate, #9, which indicates that the beneficiary owns 1,000 shares of stock. The stock certificate indicates on its face that the company is authorized to issue 1,500 shares of stock. 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).

On appeal, the petitioner simply states that there must have been some misprint or mistake on its stock certificates, a statement which falls significantly short of overcoming the many discrepancies and omissions

in the evidence discussed by the director. The petitioner does not identify specifically any erroneous conclusion of law or statement of fact on the part of the director, and instead suggests that the company would need to "correct" its corporate documentation in order to overcome the director's findings. Even if the petitioner had submitted revised or corrected documentation in support of the appeal, it must be emphasized that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the appeal will be summarily dismissed.

The second issue addressed by the director was whether the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The petitioner does not acknowledge the director's finding with respect to this issue, and therefore has not identified an erroneous conclusion of law or statement of fact on the part of the director. The AAO concurs with the director's decision and affirms the denial of the petition for this additional reason.

The third and final issue addressed by the director was whether the petitioner established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner asserts that the director "did not appreciate the fact that . . . before the L-1 is approved the company had 3 employees and also planned to grow and hire more people in the future." The petitioner also suggests that the director failed to consider that the petitioner has one year in which to grow to the point where the beneficiary will be performing primarily managerial or executive duties.

Upon review, the director included a detailed discussion of the petitioner's evidence in which he determined that the petitioner failed to provide a sufficiently detailed description for the beneficiary's proposed position. Contrary to the petitioner's assertion, the director did in fact acknowledge that the petitioner had already hired three part-time employees, and noted the petitioner's claim that it would hire permanent staff in the future. The director also acknowledged that the petitioner is allowed one year from the date of approval of the petition to support a managerial or executive position, but found that the petitioner did not sufficiently explain how the beneficiary would be relieved from performing non-managerial duties within one year. The petitioner has not identified the job titles or duties of the part-time staff already hired, nor has it provided any specific information regarding the number and types of positions to be filled during the first year in operation. Therefore, the petitioner's claims that the director did not take such factors into account are not persuasive, and the AAO concurs with the director's decision to deny the petition.

Beyond the decision of the director, the AAO finds insufficient evidence to establish that the petitioner has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner indicated at the time of filing that the U.S. company's offices are located at [redacted] in San Jose, California, and stated on Form I-129 that the beneficiary would work at this address. This address also appears to be the beneficiary's residential address. The only lease agreement in the record is a month-to-month lease between [redacted] and "[redacted]" for office space located at [redacted] in Morgan Hill, California. The petitioning company is not named on the lease agreement, and there is no evidence that the petitioner is operating from this address. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of*

California, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

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.**