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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



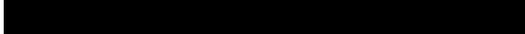
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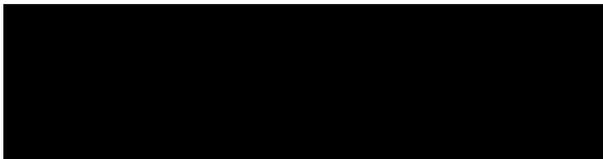
IN RE:

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:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as a 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 Louisiana corporation, states that it provides management information software solutions to local businesses. It claims to be a joint subsidiary of Ahlers

[REDACTED], located in Breaux Bridge, LA. The beneficiary was previously granted L-1A status for a period of one year, from December 2007 to November 2008, to open a new office in the United States. The petitioner now seeks to extend his status so that he may continue to serve in the position of Managing Director for three additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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 evidence of record establishes that the petitioner is a corporation "doing business." Counsel submits a letter and additional evidence in support of the appeal.

#### I. The Law

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.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

## II. The Issue on Appeal

### A. Employment in a Managerial or Executive Capacity

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity pursuant to section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A) and section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 20, 2008. The petitioner indicated on the Form I-129 that it is a "software/development" business with two employees and gross annual income of \$50,000. The petitioner stated that the beneficiary's duties will consist of "Managing Director of Joint Ventureship." The petitioner did not submit any additional documentation or explanation of the beneficiary's proposed duties.

On the Form I-129, the petitioner indicated that the beneficiary's employer abroad was [REDACTED]. The petitioner described the beneficiary's former role for the foreign employer as follows:

Overall product developer and General Manager of Trac Tech (subsidiary of ██████████, Manager. Developer and formation of Company in US (petitioner) Manager and developer of product in US Subsidiary.

The director issued a request for additional evidence ("RFE") on March 18, 2009 in which he instructed the petitioner to submit, inter alia, the following: (1) evidence establishing the beneficiary's employment in the United States is in an executive or managerial capacity, (2) evidence documenting the staffing of the United States operation, (3) evidence documenting that the financial status of the United States operation is sufficient to support an employee in an executive/managerial capacity.

In a response received on May 4, 2009, the petitioner submitted an organization chart for the petitioning company showing the beneficiary as the Managing Director reporting to ██████████ the Director, and ██████████ the CEO. Reporting to the petitioner were the following: ██████████ (Graphic Designer), ██████████ (Administration), ██████████ (Hardware & Software Technicians), and ██████████ (Web Developer).

The petitioner provided short position descriptions regarding the employees listed on the organization chart reporting to the beneficiary. Copies of 1099-MISCs were issued to two of the employees listed on the organization chart, ██████████ and ██████████. The 1099-MISC shows payment of \$3,700 to one employee and \$747.50 to the second. The AAO agrees with the director's conclusion that the amount of income paid to these individuals, whom the beneficiary claims to be managing, indicates they are intermittent employees at best. None of the evidence submitted substantiates the existence of the other two employees listed on the organization chart, namely ██████████ (Hardware & Software Technicians) and ██████████ (Web Developer).

The petitioner submitted a "Duties Roster" dated January 1, 2009 listing the "Managing Director's duties/role as follows:

- The Managing director is responsible for both the day-to-day running of the company and developing business plans for the long term future of the organization
- The Managing director is accountable to the board and the shareholders of the company. It is the board that grants the Managing Director the authority to "run" the company.
- The Managing director needs to manage everything. This includes the staff, the customers, the budget, the company's assets and all other company resources to make the best use of them and increase the company's profitability.

As further evidence of the petitioner's job duties, the petitioner submitted an "Agreement of Authorization" signed by a representative from each of the parties in the joint venture. The agreement states that:

██████████ has full authority to sign any agreements on ██████████ behalf as he sees fit and manage the US based business. As and when ██████████ sees that Urban Outsources is beginning to produce a solid profit margin, distribution of its shares and profit will be split between the members of ██████████ has authority

to utilize shares and profit until such time to bring [REDACTED] to a profitable business capable of maintaining steady income.

Even though requested by the Director, the petitioner failed to submit evidence clarifying the size and nature of the facility where the U.S. entity claims to be doing business. 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).

The director denied the petition on June 30, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive position under the extended petition. The director determined that the “record does not establish that the beneficiary has been, and currently is employed in an executive/managerial capacity for the U.S. entity.”

Upon review, the AAO concurs with the director’s decision and affirms the denial of the petition. On appeal, the petitioner fails to identify an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Rather, the petitioner disputes a conclusion not even raised by the director, specifically, whether the petitioning entity is “doing business” pursuant to 8 C.F.R. § 214.2(l)(14)(ii)(B) .

On appeal, counsel submits a letter dated July 30, 2009. Counsel argues that the “petitioner takes exceptions with the United States Citizenship & Immigration Services in that they do meet the requirements as a company “doing business” in Title 8, CFR part 214.2 (1)(1)(ii). Under this section doing business is defined as the regular, systematic and continuous provision of goods and/or service by a qualifying organization.” Furthermore, counsel states that it “is the petitioner’s contention that they are a corporation ‘doing business’ and that their Managing Director, [REDACTED] L-1 extension should have been approved.”

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. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner fails to submit any evidence and fails to identify any erroneous conclusion of law or statement of fact disputing the director’s conclusion. Furthermore, the petitioner does not dispute the director’s statements that (1) the company does not have any full-time, professional or supervisory employees, (2) that additional evidence clarifying the size and nature of the facility where the petitioner claims to be doing business was not submitted in response to the RFE, (3) an audited or reviewed financial statement was not submitted, and (4) the record does not establish that the beneficiary has been, and currently is employed in an executive/managerial capacity for the U.S. entity. The petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal.

In a letter submitted in conjunction with the appeal, Counsel states that the company was “only actively ‘doing businesses’ for approximately ten months at the time of filing the extension.” Counsel claims that the director therefore erroneously concluded that the company does not meet the requirements as a company “doing business.” Counsel argues that the director improperly overlooked submitted evidence due to the fact that the petitioner is a small business and is not required to have audited financial statements. As evidence that the company is doing business, the petitioner submits a statement from the Managing Director explaining his decision to hire independent contractors rather than full-time employees. The Managing Director’s letter

cited at length to a study published by the United States Small Business Association discussing challenges facing small businesses today.

The director's denial rests solely on the issue of whether the evidence establishes that the beneficiary "has been, and currently is employed in an executive/managerial capacity for the U.S. entity." Counsel's argument erroneously addresses an issue not raised in the director's denial, whether the petitioning entity is "doing business" as defined in "Title 8, CFR part 214.2(1)(1)(ii)." Counsel's argument clearly fails to address any of the conclusions of law or statements of fact made by the director in his denial.

A review of the record shows that the only statements relating to the decision of the director are made by counsel in the July 30, 2009 letter. Counsel concludes that "Mr. [REDACTED] fits the definition as set forth in the Act. He is effectively managing the new corporation, even rendering a profit in its first year of existence. The L-1 Visa should be approved."

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

#### B. Qualifying Relationship

Beyond the decision of the director, another issue in this matter is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The United States petitioner claims to be a joint venture between the foreign employer, [REDACTED] (Pty) Ltd t/as [REDACTED], and an unaffiliated United States organization, [REDACTED]

The petitioner claims that each partner in the joint venture has a 50 percent ownership share. As evidence of the qualifying relationship, the petitioner submitted a certificate of organization for the petitioner from the State of Louisiana. There is no evidence in the record substantiating the existence or ownership of [REDACTED] the foreign employer.

As defined in 8 C.F.R. 214.2(l)(1)(ii)(k), a "joint venture" is a "firm, corporation, or other legal entity of which a parent owns...directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity."

In response to the RFE, the petitioner submitted a copy of a U.S. Income Tax Return for an S Corporation (Form 1120S). The tax returns state that 50 percent of the petitioner's shares are owned by the beneficiary, Jean-Luc Ahlers. The other 50 percent of the company's shares are owned by [REDACTED] [REDACTED] appears to be the President of the United States entity involved in the joint venture.

The tax returns indicate that the petitioner is 50 percent owned by the beneficiary, thus directly contradicting the claim that the petitioner is a joint venture of a foreign entity. Consequently, the petitioner did not establish that it is a qualifying organization doing business in the United States and at least one foreign country, or that it has a qualifying relationship with a foreign entity. See 8 C.F.R. § 214.2(l)(1)(ii)(G). Furthermore, willful misrepresentation in these proceedings may render the beneficiary inadmissible to the United States. Section 212(a)(6)(C) of the Act.

The inconsistencies between counsel's assertions and the evidence in the record raise serious doubts regarding the claim that the petitioner is an affiliate of the foreign company. 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).

In addition, the petitioner failed to submit any evidence verifying the existence and ownership of the foreign employer. There is insufficient documentation to establish that the foreign company is actively engaged in the regular, systematic, and continuous provision of goods or services as an employer in the United States or in a foreign country. Therefore, the petitioner has not established that the foreign parent company is a qualifying organization as defined by the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

Due to the inconsistencies and deficiencies detailed above, the petitioner has not met its burden to establish that the petitioner is an affiliate of the foreign company. For this additional reason, the petition cannot be approved.

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. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 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. In as much as the petitioner has not identified specifically an erroneous conclusion of law or statement of fact in support of the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.