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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**

**PUBLIC COPY**



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DATE: SEP 14 2011

Office: VERMONT SERVICE CENTER

FILE: 

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: SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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, a Malaysian company filing on behalf of its U.S. subsidiary, 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 U.S. entity is a Florida corporation established in 2007. The beneficiary was previously granted one year in L-1A status, from April 3, 2008 until April 2, 2009, in order to open the new U.S. office. The petitioner now seeks to extend the beneficiary's status so that he may continue his employment as chief executive officer for three additional years.

The director denied the petition on June 19, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity under the extended petition. The director emphasized that the U.S. company was not staffed, and that the beneficiary, as the company's sole employee, would be engaged in the non-managerial, day-to-day operations of the business, rather than performing primarily qualifying managerial or executive duties. The director further found that the petitioner failed to demonstrate that it has sufficient physical premises to house the business and its immediate expansion plans.

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 the Form I-290B, Notice of Appeal or Motion, the petitioner indicates that it is submitting additional evidence to support the requested extension of status. This evidence includes: (1) copies of employment contracts and resumes for two employees hired subsequent to the denial of the petition; (2) a revised company organization chart that includes the newly hired individuals, along with job descriptions for both new employees; (3) a revised position description for the beneficiary which provides a breakdown of the number of hours he will allocate to each of his duties on a weekly basis; and (4) evidence to show that the U.S. company "is now being housed at a much proper office environment," including a "service agreement" with Individual Offices, Inc. signed on July 15, 2009 and photographs of the newly leased office. The petitioner has not submitted a brief or letter in support of the appeal.

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. On appeal, the petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal, or even raised any specific objection to the director's findings. Rather, the petitioner submits evidence of facts that came into being subsequent to the denial of the petition, and, in the case of the expanded job description for the beneficiary, evidence that was previously requested.

The critical facts to be examined are those that were in existence at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Therefore, the petitioner's evidence of newly-hired employees, its revised organizational structure, and its new office lease will not be considered on appeal.

With respect to the revised position description, we note that the director, in a request for evidence issued on April 17, 2009, specifically requested that the petitioner submit a complete job description for all employees of the U.S. company, including the beneficiary, and instructed the petitioner to submit a breakdown of the number of hours devoted to each of these employees' job duties on a weekly basis. The petitioner did not provide this information in response.

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 job description to be considered, it should have submitted it in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of this evidence on appeal.

Beyond the decision of the director, the petitioner has not submitted evidence that the U.S. company has been doing business as defined in the regulations for the previous year, pursuant to 8 C.F.R. § 214.2(l)(14)(ii)(B). The petitioner stated in its letter dated March 19, 2009 that it delayed injecting "initial capital expenditure" into the U.S. subsidiary company until December 2008, prior to which date the beneficiary performed the "initial business development effort." The petitioner has not submitted any evidence of business transactions occurring prior to January 2009. As noted above, the beneficiary was granted one year in L-1A classification commencing on April 3, 2008. The petitioner's IRS Form 1120 shows assets of \$1,632, no income, no rents, no salary and wage expenses, no advertising expenses and only minimal office expenses, which further confirms a conclusion that the company was not doing business during the first nine months of the

beneficiary's one-year period of L-1A employment. 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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The AAO notes that the petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary would be coming to the United States to open a new office. The petitioner may not be granted a second "new office" L-1A visa approval for its U.S. office. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard applicable to new offices, USCIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). Accordingly, the petition was properly denied.

If the petitioner now believes that the beneficiary is eligible for L-1A under a new set of facts, the proper course of action is to file a new petition. Despite the previous denial, there is no bar to the petitioner's filing of a new petition supported by new evidence of eligibility.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows 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 at 1043.

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 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.