

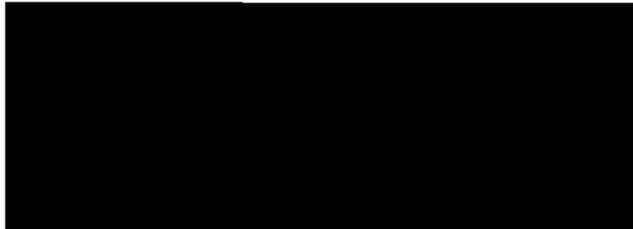
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 14 2012** Office: CALIFORNIA 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:

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, California Service Center, revoked the approval of 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 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 Hawaii corporation, operates a wedding coordination business. It claims to be an affiliate of [REDACTED] located in Osaka, Japan. The petitioner seeks to employ the beneficiary in the position of Coordinating Manager for a period of three years.

The director initially approved the petition on January 9, 2009. On February 4, 2010, the director issued a notice of intent to revoke the approval pursuant to the regulation at 8 C.F.R. § 214.2(l)(9)(iii)(A)(5), based on a finding that the approval of the petition involved gross error. The director revoked the approval on April 1, 2010, after reviewing the petitioner's response to the notice of intent to revoke. The director determined that the petitioner failed to establish that the beneficiary would 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. The appeal consists of a Form I-290B, Notice of Appeal or Motion signed by [REDACTED] in his capacity as president, who is identified elsewhere in the record as holding the position of "[REDACTED]" Where asked to "provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed, the petitioner indicates:

- Fact: After moving to Hawaii I was promoted to Vice President of the company.
- Fact: I am performing the duties of a Vice President for [the U.S. company].
- Fact: I have set our monthly goal at 30 weddings per month. I have instituted several new programs to move the company toward this goal by introducing beach weddings, photo shoot opportunities, vow renewals and wedding receptions. . . .

The statement goes on to provide four additional facts regarding the vice president's duties. The petitioner indicated that no supplemental brief or additional evidence would be submitted to the AAO.

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 revocation of the petition approval. 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 describes the duties performed by the vice president of the company. [REDACTED] who is identified in the record as the company's vice president and who signed the Form I-290B on behalf of the petitioner, appears to be making the statement in the first person. As the instant petition was filed to classify a different individual for a different position (Coordinating Manager), the statements made on Form I-290B appear to be wholly irrelevant to the stated grounds for denial.

Even if the AAO assumed, in the alternative, that the first-person statement on the Form I-290B should be attributed to the beneficiary, we note that the petitioner has consistently indicated that the beneficiary in this matter was transferred to the United States to serve in the position of "Coordinating Manager" and continued to hold this position as of March 2010 when the petitioner responded to the notice of intent to revoke. If the beneficiary has been promoted, then the petitioner had ample opportunity to provide her new job title and job duties prior to the revocation of the petition approval.

If the petitioner is now claiming that the beneficiary is employed as its vice president, the AAO notes that on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). 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'r 1998).

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 as a basis for the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.