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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

[Redacted]

D7

DATE: **AUG 08 2012** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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:

[Redacted]

**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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, 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 classify the beneficiary as an intracompany transferee in a specialized knowledge capacity 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 Colorado limited liability company, states that it is a federal defense contractor with a branch office located in Kabul, Afghanistan. It seeks to employ the beneficiary in the position of business and finance manager for a period of three years.

The director denied the petition on April 23, 2012 based on a finding that the petitioner failed to establish: (1) that the beneficiary was employed by the qualifying organization abroad for one continuous year within the three years preceding the filing of the petition; (2) that the beneficiary's employment abroad was in a qualifying managerial or executive capacity, or that it involved specialized knowledge; (3) that the beneficiary possesses specialized knowledge; and (4) that the beneficiary's proposed position in the United States is in a specialized knowledge 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 the Form I-290B, Notice of Appeal or Motion, counsel for the petitioner states:

The USCIS erred when it concluded that the beneficiary was not coming to the United States to fill a specialized knowledge position.

The USCIS erred when it concluded that the proffered position was akin to a Construction Manager.

The USCIS erred when it concluded that the beneficiary was not employed in a specialized knowledge position overseas.

The USCIS erred when it concluded the beneficiary had not been employed by the Petitioner in a specialized knowledge capacity for at least one year in the last three years.

A brief of the issues will be submitted to the Administrative Appeals Office.

Counsel indicated on the Form I-290B that he would forward a brief and/or additional evidence to the AAO within 30 days. The appeal was filed on May 25, 2012. As of this date, the AAO has received nothing further and the record will be considered complete.

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 agrees with the director's decision and will affirm the denial of the petition. While counsel generally objects to the denial of the petition, he has not identified specifically an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. As noted above, while it appears that counsel intended to further articulate the basis for the appeal by submitting a brief to the AAO, no brief has been received.

Beyond the decision of the director, the petitioner has not established that it is doing business as a qualifying organization in the United States.

The term "qualifying organization" is defined as a United States or foreign firm, corporation, or other legal entity which, *inter alia*, "[i]s or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States . . . ." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

The regulations define "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and *does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.*" 8 C.F.R. § 214.2(l)(1)(ii)(H) (emphasis added).

The petitioner claims to have been doing business in the United States since its establishment in 2008 but failed to submit any evidence to substantiate this claim. All of the submitted evidence relates to the petitioner's operations in Afghanistan, not the United States. The petitioner did submit a copy of its 2010 Internal Revenue Service (IRS) Form 1065, U.S. Return of Partnership Income, representing its business activities for the calendar year 2010. However, the Form 1065 tax form is dated January 26, 2012, less than one month prior to the filing of the petition. The petitioner's 2010 Colorado Form 106 tax forms were also signed on January 26, 2012. This inconsistency raises concerns about whether the tax return was filed with the IRS at the completion of the 2010 tax year or whether the tax return was generated simply as evidence in support of this petition.

Furthermore, the petitioner submitted an organizational chart for the U.S. petitioner that represents a total of eleven individuals staffing the office in Berthoud, Colorado. However, the petitioner submitted 2012 IRS Forms W-4, Employee's Withholding Allowance Certificate, for only five individuals. These tax documents also exhibit inconsistent dates. Although the forms are for the 2012 tax year, one individual purportedly signed the Form W-4 on January 29, 2011. *See* 2012 Form W-4 of [REDACTED]. Two additional employees signed their forms in December 2012, or ten months after the visa petition was filed. In other

words, these individuals somehow signed their forms in future. See 2012 Forms W-4 of [REDACTED] and [REDACTED]

Finally, the petitioner submitted copies of the Colorado Department of Labor and Employment, Unemployment Insurance Quarterly Premium and Wage Report Web Site, for the four fiscal quarters of 2011. These forms reflect that the U.S. petitioner consistently employed one individual during the year, [REDACTED]. While two other employees are represented in the reports, the two individuals only worked one quarter each and received total wages in the amount of \$5,600 and \$8,167, respectively. These documents are inconsistent with the petitioner's staffing claims, whether the AAO looks to the five employees claimed on the Form I-129 or the eleven employees reflected in the submitted organizational chart.

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).

Upon review, the petitioner has not established that it is a "qualifying organization" that is engaged in the regular, systematic, and continuous provision of goods and/or services in the United States. At best, the U.S. petitioner appears to exist as "the mere presence of an agent or office" in the United States. For this additional reason, the petition must be denied.

As a second issue, again beyond the decision of the director, the AAO must note that the petitioner has not submitted evidence to demonstrate that it has secured sufficient physical premises to house a staff of eleven employees in the U.S. office. See 8 C.F.R. § 214.2(l)(3)(vi)(A).

Although the petitioner did not file the petition as a "new office," the physical premises requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commence doing business so that it will support a managerial or executive position within one year. See 52 Fed. Reg. 5738, 5740 (February 26, 1987). A petitioner is not absolved of the requirement to maintain sufficient physical premises merely because it has been in existence for more than one year.

Again, in order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. See 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business. In this case, the lack of evidence regarding the business premises, along with the previously noted inconsistencies, seriously undermines the claim that the petitioner has been and will be doing business in a manner that will support the beneficiary's claimed position.

For this additional reason, the petition must be denied.

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. The AAO maintains plenary power to review each appeal

on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.