

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



D7

DATE: **DEC 05 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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.

The petitioner filed this nonimmigrant petition seeking to classify 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 Georgia corporation established in 2011, is in the media and advertising industry. According to the Form I-129, Petition for a Nonimmigrant Worker, the petitioner seeks to employ the beneficiary in the position of Media Director in its new office for a period of three years.¹

The director denied the petition on December 19, 2011 on the sole ground that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director observed that the petitioner provided different position titles for the beneficiary: Media Director, Vice President, Media and Accounting, and Communications Manager. The director concluded that the differing titles caused much confusion as to the exact position the petitioner is seeking to employ the beneficiary, as well as the proposed duties and responsibilities of the beneficiary. The director concluded that the beneficiary's position did not appear to involve the supervision and management of other supervisory, professional, or managerial employees. The director concluded that the stated responsibilities for the beneficiary appear to overlay or duplicate those of the President. Finally, the director concluded that the petitioner failed to establish that the beneficiary would function at a senior level within the organization other than in position title, as it appeared that the beneficiary would be primarily engaged in providing assistance to the President of the company, not managing or directing the organization.

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, the petitioner provides a description regarding the foreign entity, [REDACTED] located in China, including the foreign entity's services and clients. The petitioner provides a description of the beneficiary's employment with the foreign entity, including his job duties, his qualifications, and his achievements. The petitioner also explains the reasons why it chose the beneficiary to be its Media Director in the United States, and the skills the Media Director is supposed to have. Finally, the petitioner states in pertinent part:

3. [The beneficiary's] job in the US branch are:
 - A) Help president setting up the new branch;
 - B) Help the president hiring the professional staff *[sic]*;
 - C) Investigate and survey the present situation and trend of development of media marketing;

¹ As will be discussed below, the petitioner has provided different position titles in which it intends to employ the beneficiary. In addition, although the petitioner seeks to employ the beneficiary for three years, the petition, if approvable, may only be granted for a maximum of one year. See 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).

- D) Training and supervising the new employees;
- E) Hosting the first issue of "Chinese Style" magazine's article writing, art work design, printing and publishing;
- F) Looking for and negotiating with the suppliers and publisher;
- G) Communicating with Chinese customers constantly, introducing the market situation of media industry of US. Stay informed about their willingness to invest.

4. I think the problem that make you confuse are I and translator. The problem of the translator is limited translation ability. Many key vocabularies were translated inaccurate. Plus I was neglectful and careless. I was not able to checking and verifying his work. Also, I was misunderstanding with the person who was in charge to contact me from [REDACTED]. So causing so many problems, confusing and misunderstanding. I feel very sorry to have this kind of problems and promise will never happen again [sic].

In support of the appeal, the petitioner submits: copies of the beneficiary's team's projects on behalf of the foreign entity; a letter from the foreign entity; a print-out entitled "About [REDACTED] describing the foreign entity's services, clients, honors, and performance; the foreign entity's business license; the foreign entity's 2010 balance sheet; and the foreign entity's tax payment certificate.

Upon review, the AAO agrees with the director's decision and affirms the denial of the petition. The petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity in the United States, particularly considering that the petitioner provided significantly differing position titles and position duties for the beneficiary.

The petitioner has not specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The petitioner states vaguely that "the problem" was due to translation inaccuracies, carelessness and misunderstanding, but fails to specifically identify or define "the problem." The petitioner also provides a new list of job duties, but fails to clarify or resolve the new list of job duties with the previously provided lists. While the petitioner provides additional information and supporting documentation regarding the foreign entity and the beneficiary's employment with the foreign entity, this information and documentation are not pertinent to the issue on appeal. As discussed above, the director's sole ground for denial was the petitioner's failure to establish that the beneficiary would be employed in a primarily managerial or executive capacity in the United States.

The 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.

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. 8 C.F.R. § 103.3(a)(1)(v).

[REDACTED]

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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. Here, the petitioner has not met that burden.

ORDER: The appeal is summarily dismissed.