

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 07 2012**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

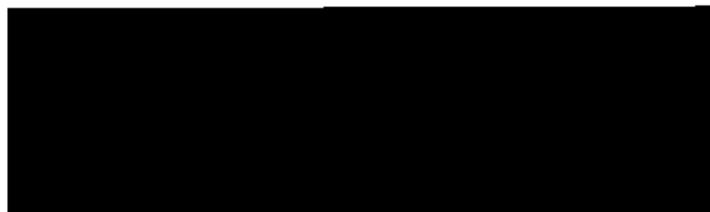
Petitioner:

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:



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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On October 10, 2012, this office provided the petitioner with notice of adverse information and afforded the petitioner an opportunity to provide rebuttal evidence.

The petitioner claims to be a corporation organized under the laws of the State of New York. It seeks to employ the beneficiary as its President and Operations Manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant alien pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

Pursuant to 8 C.F.R. § 103.2(b)(16)(i), this office notified the petitioner that, according to the records at the NYS Department of State, Division of Corporations, website, the petitioner is currently dissolved. See www.dos.ny.gov/corps (accessed September, 19, 2012).

This office also notified the petitioner that if it is currently dissolved, this fact is material to its eligibility for the requested visa. Specifically, the petitioner's dissolution raises serious questions about whether it continues to exist as an importing employer, whether the petitioner maintains a qualifying relationship, and whether it is authorized to conduct business in a regular and systematic manner. See section 214(c)(1) of the Act; see also 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (l)(3). The AAO granted the petitioner 30 days in which to provide a certificate of good standing or other proof that the petitioning business had not been dissolved and is currently in active status.

On November 2, 2012 counsel for the petitioner responded to the AAO's notice. Counsel for the petitioner conceded that the petitioning entity was dissolved by proclamation due to inactivity on October 26, 2011. Counsel stated that the petitioner is in the process of filing corporate franchise taxes required for reinstatement. Counsel requests that "the decision on this appeal be stayed until we submit written proof" of reinstatement.

The regulations at 8 C.F.R. § 103.2(b)(8)(iv) states that additional time to respond to a USCIS request for evidence may not be granted. Thus, the appeal will be dismissed as moot.¹

Furthermore, the AAO observes that the director denied the petition based on the petitioner's failure to establish that it had secured sufficient physical premises to house the new office as of the date of filing, as required by 8 C.F.R. § 214.2(l)(3)(v). On the Form I-129, the petitioner stated in response to Part 5, Question 5 regarding the work location of the beneficiary that the "exact address (lease) to be determined after business

¹ Even if the appeal could be sustained, the petition's approval would be subject to revocation pursuant to 8 C.F.R. § 214.2(l)(9)(iii) upon dissolution of the corporate entity. Accordingly, the AAO finds that the dissolution of the petitioner deprives this appeal of any practical significance. Considerations of prudence warrant the dismissal of the appeal as moot. See *Matter of Luis*, 22 I&N Dec. 747, 753 (BIA 1999).

is started." In response to the director's RFE dated July 21, 2009, the petitioner again stated that "[b]ecause the L-1A Petition has not yet been approved, new premises have not yet been leased." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

On appeal, counsel for the petitioner asserts that "an oral agreement for a lease in New Jersey for the Petitioner was made about a year ago." The petitioner submits an affidavit from the alleged landlord, who states that his company agreed that it would allow the petitioner to share its office space upon the beneficiary's arrival in the United States. Counsel does not explain why this arrangement was not explained at the time of filing or in the petitioner's response to the director's request for evidence, or why the petitioner twice stated that it had not secured any physical premises in the United States. 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). 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). Accordingly, even if the petitioner had maintained an active corporate status, the AAO would dismiss the appeal.

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 met that burden.

ORDER: The appeal is dismissed as moot.