



U.S. Citizenship  
and Immigration  
Services



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Date: **DEC 13 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 Director, Vermont 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 seeks to employ the beneficiary in the position of Managing Director for two years 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 Director, Vermont Service Center, initially approved the petition on May 8, 2009.

On August 9, 2011, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition, to which the petitioner provided a timely response. The director issued a final decision on November 11, 2011 concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity, pointing to the petitioner's failure to show payments made to its claimed employees, including the beneficiary. As such, the director revoked the approval of the petition and the petitioner subsequently appealed the revocation. The director declined to treat the appeal as motion and now the matter is before the AAO.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must further establish that the beneficiary seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. Counsel has not identified any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Therefore, the appeal must be summarily dismissed.

Instead, counsel submits signed statements from three claimed employees of the petitioner and subordinates of the beneficiary. Counsel vaguely states that he hopes these letters adequately address the matter. Even if counsel had identified an erroneous conclusion of law or statement of fact on the part of the director in support of the appeal, the newly submitted evidence would be inadequate to overcome the director's conclusion that the petitioner failed to establish the beneficiary's eligibility as an L-1A manager or executive. The director specifically noted in the notice of intent to revoke and in the revocation decision that the

petitioner failed to provide evidence of compensation to its claimed staff, and the brief statements submitted on appeal do not address this deficiency. 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). Further, the petitioner was provided with an opportunity to supplement the record with evidence related to its employees and contract staff prior to the revocation of the petition approval and failed to do so. 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 evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is summarily dismissed.