

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 19 2012

OFFICE: VERMONT 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: 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.

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 employ the beneficiary as a 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 Florida corporation, states that it is engaged in maritime and door-to-door international shipping. The petitioner claims to be a subsidiary of Cooperativa Constructora Los Celtas 17, R.L., located in Venezuela. The petitioner seeks to employ the beneficiary as the Chief Financial Officer for a period of two years.

On July 26, 2011, the director denied the petition concluding that the petitioner failed to establish that the beneficiary's position in the United States will be in a primarily managerial or executive capacity. In denying the petition, the director found that the petitioner's organizational chart and list of job descriptions for the U.S. company's employees raises discrepancies and doubts as to the beneficiary's actual duties and role in the U.S. company. The director noted that although the petitioner claims that the beneficiary is in charge of all financial matters for the U.S. company, the company's accountant does not report to the beneficiary, but to the company's president/CEO and is at an equal level with the beneficiary. The director also noted that one employee is listed as the export manager's assistant on the organizational chart, but is listed as the export manager in the job descriptions.

Additionally, the petitioner submitted two different organizational charts with the petition. The first organizational chart illustrates that the beneficiary as chief financial officer, the marketing manager, and the accountant are all at an equal level reporting to the president/CEO. In that first organizational chart, the beneficiary supervises the operations manager, who supervises the export manager, who then supervises an assistant. The second organizational chart illustrates that the beneficiary as chief financial officer is the only employee who reports directly to the CEO, and the operations manager, who supervises the export manager and assistant, marketing manager, and accountant report directly to the beneficiary.

On August 29, 2011, the petitioner submitted the Form I-290B, Notice of Appeal or Motion, to appeal the denial of the underlying petition. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. The petitioner marked the box at part two of the Form I-290B to indicate that a brief and/or additional evidence would be submitted to the AAO within 30 days. The record indicates that the petitioner did not file a brief or supplemental evidence within the allowed timeframe. The AAO will consider the record complete as presently constituted.

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 the 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.

On appeal, the petitioner simply states, "[t]he Service denied the petition because it considers that the evidence is insufficient to establish that the beneficiary has been relieved from performing the non managerial day to day operations involved in producing a product or providing a service. . . . [The beneficiary] manages a major function of the Organization as the Chief Financial Officer. . . ." 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 suggestion that the director's decision did not consider all of the evidence is not sufficient for an appeal.

Furthermore, this is the first claim on the part of the petitioner that the beneficiary is a function manager. 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).

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. As no erroneous conclusion of law or statement of fact has been specifically identified and as no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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.