

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]

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DATE: **DEC 20 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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)

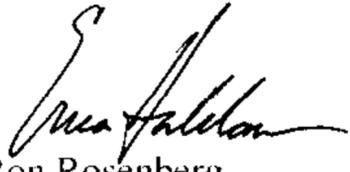
ON BEHALF OF PETITIONER:  
[REDACTED]

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The director of the 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 seeks to employ 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 is a Florida corporation established on September 2, 2009. It is engaged in the business of "International Freight Forwarding, Logistics and Product Sourcing." The petitioner claims to be a subsidiary of Uni Logistics Inc., which is based in China. United States Citizenship and Immigration Services (USCIS) previously granted beneficiary L-1A classification for a period of one year in order to open the petitioner's new office. The petitioner now applies for an extension of the visa and seeks to employ the beneficiary as Vice President of Operations for an additional two years.

The director denied the petition on March 27, 2012 on the ground that the petitioner failed to establish it would employ the beneficiary in a primarily managerial or executive capacity. In doing so, the director determined that the petitioner had not demonstrated that the beneficiary would act other than as a first-line supervisor.

The petitioner subsequently filed an appeal. Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit an appellate brief or additional evidence directly 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 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.*

On appeal, counsel states only:

The petitioner has demonstrated that it employs a total of ten (10) employees. However, the Service did not take into consideration that the petitioner has a wholly-owned subsidiary which employes [sic] two (2) of the employees, who

report directly to the beneficiary. We will be submitting evidence of the aforesaid within 30 days to the AAU.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. Counsel's brief statement on the Form I-290B has not sufficiently identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Therefore, the appeal will be summarily dismissed.

Counsel's sole contention is that the director did not consider employees of the petitioner's wholly-owned subsidiary in determining whether the beneficiary would be employed in a qualifying managerial or executive capacity. The record reflects that the petitioner claimed the beneficiary supervised only one subsidiary employee: [REDACTED] Inc. It is unclear who the petitioner claims is the second subsidiary employee.

The director's denial states in relevant part:

The organization chart indicates a total staff of 10, with all but two (Warehouse Specialist and Executive Assistant) bearing executive or managerial titles . . . Again according to the chart, the beneficiary has three executives and managers reporting directly to him, but these three do not appear to have any subordinates; all other personnel (except the President) report to the Vice President.

Although the denial does not mention [REDACTED] by name, an examination of the organizational chart clearly shows that he is one of the three individuals mentioned who report directly to the beneficiary. As such, the director appropriately considered the only subsidiary employee alleged by the petitioner.

To the extent that the petitioner claims any other subsidiary employees as the beneficiary's subordinates, the AAO will not consider previously requested evidence that is submitted for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

While counsel indicates an intention to submit a brief and additional evidence to address the issues raised in the director's decision dated March 27, 2012, neither he nor the petitioner have submitted a brief or evidence as stated on the Form I-290B. Counsel's statement does not address the other deficiencies that led to the denial of the petition, including, but not limited to, the petitioner's failure to provide a sufficiently detailed description of the beneficiary's proposed duties.

Inasmuch as the petitioner has not identified a specific erroneous conclusion of law or statement of fact, the appeal must be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v).

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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.