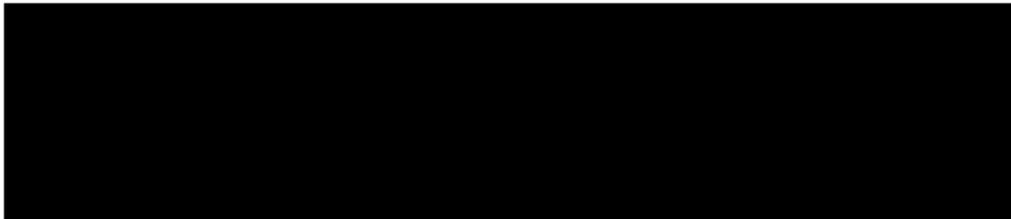




U.S. Citizenship
and Immigration
Services



D7

DATE: **DEC 20 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: 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 classify 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 New York corporation, states that it is engaged in international trade. The petitioner claims to be a branch of Shanghai Hui Xi Development Co. Ltd, located in Shanghai, China. The petitioner seeks to employ the beneficiary as the managing director of its new office in the United States.

On February 8, 2012, the director denied the petition on three alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary has been employed abroad and will be employed in the United States in a primarily managerial or executive capacity; (2) that the petitioner and foreign entities are qualifying organizations; and (3) that the beneficiary was employed by the foreign entity on a continuous full-time basis for one year within the three years preceding the filing of the petition. In denying the petition, the director found that the evidence submitted by the petitioner at the time of filing and in response to the request for evidence (RFE) contained contradictory information in reference to the claimed qualifying relationship, the date of establishment for each business (the U.S. company and the foreign entity), the scope and capacity in which both the foreign and domestic companies function, and the dates of the beneficiary's claimed qualifying employment abroad.

On March 12, 2012, 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 is attached.

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.

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. 8 C.F.R. § 103.3(a)(1)(v).

On appeal, the petitioner submits a three-page brief that simply states, "[w]e disagree with this decision and we will also have additional evidence that shows this decision is incorrect." The petitioner then makes several assertions regarding the beneficiary's dates of employment with the foreign entity, the U.S. company's current business status, the list of subordinates supervised by the beneficiary at the U.S. company, and the physical premises acquired by the U.S. company to conduct its business. Going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner also submits a copy of a lease agreement with a commencement date of February 1, 2012, more than three months after the date of filing of the petition. 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).

In the instant matter, 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's blanket assertion that the director's decision was incorrect is not sufficient for an appeal. The director's decision includes a thorough discussion of the evidentiary deficiencies and inconsistencies present in the record. The petitioner's brief statement on appeal fails to acknowledge these discrepancies, and introduces new discrepancies, by providing new dates for the beneficiary's claimed qualifying employment abroad.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591 (BIA 1988).

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 inconsistencies addressed in the director's decision, 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.