



U.S. Citizenship
and Immigration
Services



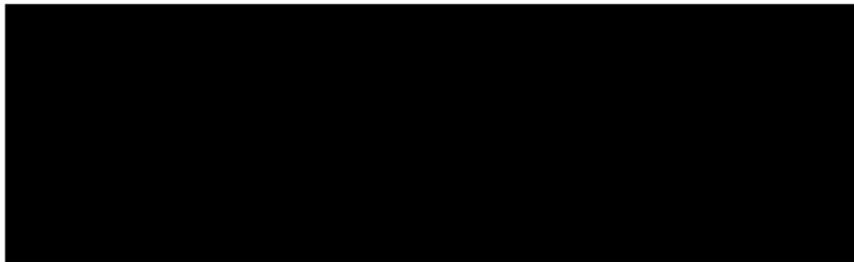
D7

DATE: DEC 27 2012 Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: 

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:



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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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, California 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 filed this nonimmigrant petition seeking to classify 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, a Wisconsin corporation, engages in the business of "software design, development, and consultancy." It claims to be a subsidiary of Sand Software Solutions PVT, Ltd., located in India. The petitioner seeks to employ the beneficiary as its Chief Coordinating Officer/Chief Executive Officer.

The director denied the petition on June 6, 2012, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner stated the following on Form I-290B, Notice of Appeal or Motion:

1. The Service erred in finding that [the beneficiary] is not a "functional manager" under INA 101(a)(44)(A)(ii), as he clearly primarily [*sic*] responsible for managing an "essential function" within the organization.
2. The Service erred in finding that [the beneficiary] would be employed primarily in a qualifying managerial or executive capacity under INA 101(a)(44)(A), (B), since, as noted above, the information provided details his duties as a functional manager.
3. Other bases of appeal as may be asserted in Petitioner's appeal brief.

As of this date, no brief or additional evidence has been submitted. The record will be considered complete.

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 affirms the denial of the petition. The petitioner has not identified specifically an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The petitioner indicated that it would provide a brief within 30 days, but to this date no brief or additional documentation has been submitted.

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

Furthermore, during the adjudication of the appeal, the AAO discovered evidence that the petitioning business in this matter is in "delinquent" status. See attached print-out. The petitioner's status is material to the petitioner's eligibility for the requested visa. Specifically, the petitioner's delinquent status 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).

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.