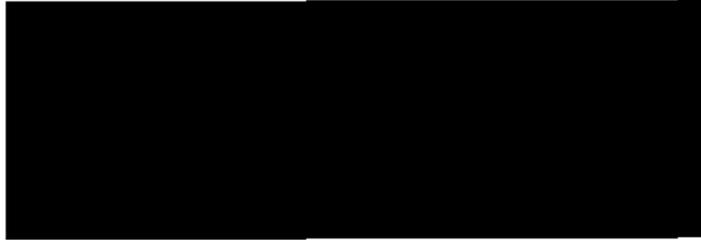




U.S. Citizenship  
and Immigration  
Services



D7

DATE:

OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE:

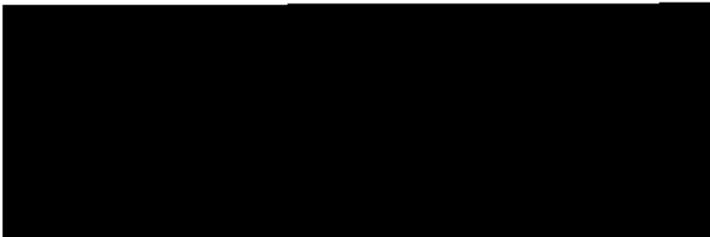
**DEC 28 2012**

Petitioner: 

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

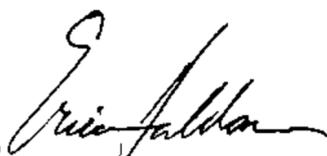


INSTRUCTIONS:

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 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 Florida limited liability company, states that it is engaged in the import of automobile and other mechanical parts. The petitioner claims to be a subsidiary of [REDACTED] located in Tel Aviv, Israel. The petitioner seeks to employ the beneficiary as the president of its new office in the United States.

On October 12, 2011, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive position within one year of approval of the new office petition. In denying the petition, the director found that the duties listed for the beneficiary's subordinates do not appear to require the skills of a manager or professional. The director further found that the duties listed for the beneficiary indicate that there will be significant and pervasive overlay of responsibilities to be met by the beneficiary and his proposed subordinates. The director observed that the petitioner submitted contradictory evidence in reference to the beneficiary's role at the U.S. company and whether he would be involved in the day-to-day operations of the company.

On November 10, 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 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, counsel for the petitioner submits a two-page brief stating:

[The beneficiary's] previous counsel and [the beneficiary] had a language barrier which caused an error in communications between the parties.

The previously retained counsel erroneously prepared a business plan for a much bigger corporation than [the beneficiary] planned to open.

Previous counsel, from the beginning, prepared an unrealistic business plan that was not [the beneficiary's] intent. Clearly, [the beneficiary] trusted his previous counsel to zealously represent him in his immigration matters, but the manner in which he listed the job duties clearly contradicts the service's guidelines in granting an L1 application. Previous counsel should have known the law, and he should have known there would be an overlay of responsibilities in the duties he listed for [the beneficiary] and his subordinates.

Instead of sending in [the beneficiary's] *actual* business plan and organizational chart, previous counsel prepared a completely erroneous business plan.

Counsel for the petitioner submits a one-page affidavit from the beneficiary, explaining his understanding of the agreement he made with his previous counsel. The affidavit further states, "I am also considering filing a formal complaint against [previous counsel] because he clearly did not submit the business plan which I explained to him, but instead he provided a business plan which was erroneous, and as a result, my L1 application has been denied."

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Neither counsel nor the petitioner submits evidence that previous counsel has been informed of the allegations leveled against him and given an opportunity to respond, or explains why a formal complaint has not been filed with the appropriate disciplinary authority with respect to previous counsel's violation of ethical or legal responsibilities.

In the instant matter, neither counsel nor the petitioner have specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal, or met the requirements for an appeal based upon a claim of ineffective assistance of counsel. Additionally, the petitioner submits a new list of duties for the beneficiary and his subordinates along with a new organizational chart, while claiming that the evidence reviewed by the service center director in reaching his decision did not accurately reflect the petitioner's business plans or the beneficiary's proposed role within the company.

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). Here, the petitioner submits new evidence altering the beneficiary's position and the organizational structure of the U.S. company. 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). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

As no erroneous conclusion of law or statement of fact on the part of the director has been specifically identified, 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.