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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

[Redacted]

DATE: **JUL 27 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 filed this nonimmigrant petition seeking to extend the beneficiary's employment 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 Georgia corporation, is engaged in real estate development. It claims to be a branch of [REDACTED] located in Wuzhou City, China. The petitioner is seeking to employ the beneficiary as its Financial Director for a period of three years.

The director denied the petition on October 6, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director found that due to the size and nature of the business, and the lack of employees to perform non-qualifying duties, it could not be determined that the beneficiary will be coming to the United States to work in a 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. The petitioner submits a brief and evidence in support of the appeal.

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.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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 concurs with the director's decision and affirms the denial of the petition. The petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal.

As a preliminary matter, the additional evidence submitted by the petitioner on appeal will not be considered in this proceeding. The petitioner submits a copy of a contract dated May 18, 2009, prior to August 10, 2009, the filing date of the original Form I-129. On August 18, 2009, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Specifically, the director requested *inter alia* the following: "additional evidence to establish that

the beneficiary will be employed in a(n) executive capacity in the United States firm," a comprehensive description of the beneficiary's proposed duties, and a list of United States employees identifying each by name and position title along with a complete position description for each of the United States employees. The petitioner failed to submit the requested evidence and now submits it on appeal. Counsel for the petitioner states that the contract provides evidence of "the obvious responsibilities of the beneficiary with regard to the contractor, it also contains exclusions which detail the beneficiary's duties and supervisory responsibilities with others." The AAO will not consider this evidence for any purpose as the petitioner had the opportunity to submit such evidence with the initial petition and in response to the request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Counsel for the petitioner states on appeal that the denial does not take into account the \$5 million project the beneficiary "is being transferred to supervise." Counsel for the petitioner does not specify how the failure to mention the size of the project in the denial is an erroneous conclusion of law or fact.

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The director articulated that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director specified that the petitioner's organizational structure and its failure to provide requested evidence were the specific reasons for the denial. Counsel for the petitioner failed to explain how the size of the contract allegedly supervised by the beneficiary related to any erroneous conclusion of law or statement of fact related to the grounds for denial specified by the director.

Furthermore, counsel disputes the denial as follows:

The denial is incredibly and solely based upon a failure 'to provide a breakdown of the number of hours devoted to each of the employees' (including the beneficiary's) job duties on a weekly basis.' After adjudicating similar petitions for so many years, and after reading the identical job duties and descriptions for so many years, is the Service conceding that it still has no clue what it means to be an executive or manager?

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner declined to provide a breakdown of the number of hours devoted to each of the employee's, and the beneficiary's, job duties on a weekly basis. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director, therefore, had appropriate grounds to deny the petition for failure to submit requested evidence. The director denied the petition on additional grounds beyond the failure to submit requested evidence. The director found that the company employs only a CEO and Vice President in addition to the beneficiary and therefore there are no employees to relieve the beneficiary of non-qualifying operational job duties.

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).

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.