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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

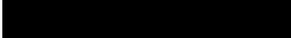


**U.S. Citizenship
and Immigration
Services**

07



DATE: JUL 27 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:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the approval of the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The Vermont Service Center approved this nonimmigrant petition seeking 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, a wholesale and retail business for enamel-insulated wire, states that it is a subsidiary of the beneficiary's foreign employer, [REDACTED]. The petition was approved for a period of one year.

On January 14, 2010, the director revoked the petition. The petitioner was previously given the opportunity to submit evidence to overcome the grounds of revocation, namely, that the company could provide no documentation or evidence that the beneficiary worked for the foreign employer. The director found that this evidence did not overcome the fact that the Director of Human Resources "would not be able to provide evidence of the beneficiary's employment with the foreign entity."

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 asserts that the Director of Human Resources Department did not have the opportunity to submit appropriate evidence to the investigators. Counsel submits a brief and additional 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 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. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue in this matter is whether the beneficiary actually had the full time employment abroad as claimed on the initial petition.

The petitioner filed the nonimmigrant petition on November 28, 2009. In a letter dated November 30, 2009, addressed to the petitioner, the director stated that an investigation was conducted at the foreign parent company. The investigation showed that "the company could provide no documentation or evidence that [REDACTED] works for the company or that her actual job title is sales manager." The investigation also showed that the beneficiary speaks no English, calling into question her ability to perform the job duties in the United States. The director requested evidence to overcome the grounds of revocation. A copy of the investigative report was attached.

The petitioner responded in a letter dated March 15, 2010. The petitioner submitted the following evidence in response: (1) a statement of fact signed by the foreign company's Director of Human Resources department and co-signed by the Director of the company's finance department providing an account of the investigative visit, (2) a letter from the [REDACTED] and [REDACTED] of the company confirming the beneficiary's employment and position as director of the sales department; (3) a letter from the [REDACTED] of the foreign company explaining the details of the investigative visit; (4) an updated position and salary verification for the beneficiary; (5) copies of employee salary records showing the beneficiary as an employee; (5) a copy of the beneficiary's employee I.D. card; (6) photos showing the beneficiary on the interior and exterior of the company premises; and (7) an affidavit from the petitioner's care-taker explaining the language skills needed at the United States office.

On January 14, 2010, the director revoked the petition. After receiving the petitioner's response to the director's notice of intent to revoke, the director determined that the evidence provided did not overcome the fact that the Director of Human Resources Department for the foreign employer was unable to provide any documentation to the Assistant Regional Security Officer-Investigator showing the beneficiary was employed by the foreign entity.

On appeal, counsel asserts that the director's decision was made in error because the director failed to take into account the fact that the investigators only requested to see the employment agreement even though the "human resources director correctly informed the investigators that the company does not sign such a document with any employees." Counsel claims that the petitioner was not provided the opportunity to submit alternative evidence confirming the beneficiary's employment with the foreign company.

In support of the appeal, counsel points to the statements of the Director of Human Resources and the president of the parent company previously submitted in response to the notice of intent to revoke. Both statements explain that the investigators requested to see the employment agreement between the foreign entity and the beneficiary. As stated by the president, the company officials "explained that when we hire departmental directors/lenders we do not use the method of signing an employment agreement with those who are hired." The statements do not detail any further requests by the investigators to see other evidence of the beneficiary's employment. Therefore, the petitioner asserts that the evidence submitted in response to the

intent to revoke by the director was not previously considered by the investigators at the time of their visit to the foreign company.

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary was working for the foreign entity.

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 has submitted sufficient independent objective evidence to resolve the inconsistencies stated by the director in his notice of revocation. In response to the notice of intent to revoke, and on appeal, the petitioner submitted an updated position and salary verification for the beneficiary, copies of employee salary records showing the beneficiary as an employee, a copy of the beneficiary's employee I.D. card, and photos showing the beneficiary at the company premises.

As stated in the director's letter dated January 14, 2010, "USCIS will concede that employment agreements are not always signed between employer and employees." The evidence submitted overcomes the grounds of revocation by establishing that the beneficiary works for the parent company and that her job title is Director of Sales Department.

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 met that burden. Accordingly, the director's decision dated January 14, 2010 is withdrawn.

ORDER: The appeal is sustained.