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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



DATE: **JUL 27 2012** Office: CALIFORNIA 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.

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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 states that it operates an art auction house and gallery. The beneficiary was previously granted L-1A classification for a three-year period in order to serve as the petitioner's president. The petitioner requests a two-year extension of the beneficiary's status so that he may continue to serve in this position.

The director denied the petition on August 5, 2010, based on a conclusion that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director observed that the beneficiary was the U.S. company's sole employee at the time of filing, and that the record shows that he has been and will be performing many aspects of the day-to-day operations of the business, rather than primarily performing qualifying managerial or executive duties.

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 the Form I-290B, Notice of Appeal or Motion, the petitioner's representative states: "We humbly request an additional 30 days to cite the erroneous conclusion of law or fact in the decision to deny the petition."

The representative indicated on the Form I-290B that she would forward a brief and/or additional evidence to the AAO within 30 days. As of this date, no brief or evidence has been submitted and the record will be considered complete.

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.

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 concurs with the director's decision and affirms the denial of the petition. While the petitioner's representative objects to the denial of the petition, she 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. As noted above, while it appears that the petitioner or its representative intended to further articulate the basis for the appeal by submitting a brief to the AAO, no brief has been received.

The AAO acknowledges the representative's suggestion that the director failed to take into account the nature of the petitioner's business, and notes that "its functions are different or at the very least unique from the business functions of the case cited in the Boiler Plate denial from the Service Center, citing Matter of Church Scientology International. . . ." The cited matter is consistent with the the statutory definitions of "managerial" and "executive" capacity, which at sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties), and can be applied to any industry. The word "primarily" is defined as "at first," "principally," or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, or other non-managerial duties, that individual cannot also "principally" or "chiefly" perform managerial or executive duties. While U.S. Citizenship and Immigration Services will take into account the nature of the petitioner's business and any other relevant factors in determining whether the beneficiary will be employed in a qualifying capacity, the petitioner still bears the burden of establishing that the beneficiary's duties are primarily managerial or executive in nature. Again, it appears that the petitioner intended to fully develop this line of reasoning in a subsequent brief.

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. 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.

ORDER: The appeal is summarily dismissed.