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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: **JUN 14 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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 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 with the field office or service center that originally decided your case by filing a 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 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 branch [REDACTED], is a medical consulting company that commenced business operations in California in 2008. The petitioner seeks to employ the beneficiary as a Manager for an initial period of three years.

The director denied the petition on January 12, 2010 concluding that the petitioner failed to establish that it is doing business as a qualifying organization. The director noted that the presence of an agent acting on behalf of the foreign entity in the U.S. does not qualify as doing business in the U.S. The director also found that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director found that the description of the duties to be performed by the beneficiary does not demonstrate that the beneficiary will have managerial control over the organization or a function, department, subdivision or component of the organization. Additionally, the director found that the record does not show that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve her from performing non-qualifying 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.

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. On appeal, the petitioner fails to identify an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Rather, the petitioner appeals on the basis of "special circumstances."

Counsel explains that the petitioner was established as a branch office of Seoul National University Hospital on August 15, 2008 and commenced business operations on November 21, 2008. Counsel states that the

foreign entity established a U.S. branch office rather than a subsidiary corporate entity in the United States because it was awaiting the approval of [REDACTED] to do so. Counsel asserts that a new corporate entity, [REDACTED] was established in California on April 10, 2009. Counsel further explains:

However, unaware of the statutory requirement for L-1A status and without adequate legal advice, [REDACTED] did not begin the transition of its LA office into the newly incorporated entity until latter half of 2009. This has caused the employee wage to continue to be paid directly from the parent organization in Korea. In addition, when [REDACTED] finally realized that the operational structure at the moment may not be sufficient as a "qualifying employer" under USCSI definition, it again had to go through governmental clearance before being able to rectify the situation.

In support of the appeal, the petitioner submits evidence of the petitioner's change from a Foreign Corporation qualified to do business in California to a United States corporation as well as a copy of the Form 941 and California EDD Form DS-6 for the 4th quarter of 2009 showing wages paid to one employee by the United States corporation.

The petitioner's basis for appeal appears to be no more than a change in business structure and a new Form 941 showing wages paid to one employee. The petitioner failed to clarify how either the Form 941 or the corporation formation documents overcomes the director's grounds of denial by identifying an erroneous conclusion of law or fact in the director's decision.

Counsel for the petitioner also requests that in the event a three year L-1A approval cannot be granted for the beneficiary, that "the beneficiary is given at least a one (1) year L-1A status under the "new office" provisions." Counsel states that the new office request "is within reasonable terms" due to the fact that the incorporation of the U.S. entity occurred in April of 2009.

On the Supplement to the initial Form I-129, Section 1, question 12, the petitioner stated that the beneficiary was not coming to the United States to open a new office. In support of the initial petition, the petitioner submitted a Certificate of Qualification showing that the petitioner was a foreign entity qualifying to transact intrastate business in the State of California dated August 15, 2008. On appeal, the petitioner submits articles of incorporation showing the petitioning entity changing to a United States corporate from a foreign entity qualified to do business in California. The petitioner's change in business structure occurred on April 10, 2009, before the filing date of the initial I-129 petition on November 9, 2009. The petitioner did not clarify why, although available, the documentation reflecting the petitioner's change in corporate status was not reflected in the initial L-1A filing.

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).

Furthermore, 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Requesting the approval of the petitioner under the "new office" standards is a material change requested on appeal and will not be considered.

The petitioner fails to submit any relevant evidence or to identify any erroneous conclusion of law or statement of fact disputing the director's conclusion. The petitioner does not dispute the director's statements that the petitioner did not provide evidence that it was actually doing business as a U.S. employer at the time of filing and as one of only two employees in the office available to perform the services of the company, it is highly unlikely that the beneficiary would be primarily performing managerial duties.

As no additional evidence is presented on appeal to overcome the decision of the director, and inasmuch as the petitioner has not identified specifically an erroneous conclusion of law or statement of fact, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

Although the appeal will be summarily dismissed, the petitioner may, without prejudice, file a new petition accompanied by the appropriate supporting evidence and filing fees.

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.