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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**

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DATE: **MAR 29 2012**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

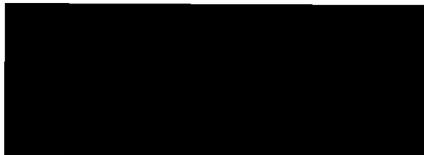
Petitioner:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 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 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 Georgia limited liability company established in 2008, states that it operates an [REDACTED] franchise retail store. It claims to be a subsidiary of [REDACTED] Limited, a Nigerian company. The beneficiary was previously granted one year in L-1A classification, from April 26, 2008 until April 25, 2009, in order to open a new office in the United States. U.S. Citizenship and Immigration Services (USCIS) denied the petitioner's subsequent request to extend the beneficiary status on June 26, 2009. The petitioner now seeks to extend the beneficiary's status for one additional year so that she may serve in the position of executive manager.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. The director further determined that the petitioner failed to establish that the U.S. company had been doing business for the previous year.

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, the petitioner submits evidence relating to a Catalog Merchant Agreement between the U.S. company and [REDACTED] which is dated March 10, 2010. Counsel indicates that the agreement will mandate that the petitioner immediately hire three additional employees, bringing its total to five, and will ultimately allow the company to support a total of 9 to 12 employees. The evidence submitted on appeal includes the 45-page agreement and information regarding the [REDACTED] direct merchant program.

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. Neither the petitioner nor counsel has identified any erroneous conclusion of law or statement of fact as a basis for the appeal. In fact, the petitioner has not addressed the specific grounds for denial of the petition. Instead, the petitioner simply submits new evidence that did not exist at the time the petition was filed in July 2009. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new

set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The [REDACTED] catalog merchant agreement, which the petitioner signed approximately eight months after the petition was filed and approximately two months after the petition was denied, cannot and will not be considered on appeal.

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 in support of the appeal, the appeal must be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.