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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

b7

[redacted]

DATE: MAR 2 9 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: Beneficiary: [redacted]

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:

[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 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, 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 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, an Arizona corporation, states that it is engaged in the import and export of meat. It claims to be a subsidiary of [redacted] located in Mexico. The petitioner has employed the beneficiary as its USA Sales Executive in L-1A status since May 2008 and now seeks to extend his status for three additional years.

The director denied the petition on June 18, 2010, concluding that the petitioner failed to establish that it will employ the beneficiary in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on July 16, 2010. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. In a letter accompanying the appeal, counsel for the petitioner asserts that "the main argument on the present matter is the fact that the petition for non-immigrant alien worker was denied against [the beneficiary] because [of] improper legal representation." Counsel asserts that former counsel did not adequately explain the beneficiary's "high managerial executive position." Finally, counsel contends that "improper submission of supporting evidence" led to the denial of the petition. Counsel indicated on the Form I-290B that he would submit a brief and/or additional evidence to the AAO within 30 days. As of this date, the AAO has not received a brief or additional evidence 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. Counsel has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Rather, counsel attributes the denial of the petition to former counsel's failure to submit evidence of the beneficiary's eligibility for the classification sought. Counsel does not address the merits of the director's decision.

Further, upon review, the petitioner has failed to fulfill the prerequisites for allegations of ineffective assistance of counsel. *See Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003); *Matter of Grijalva*, 21 I&N Dec. 472 (BIA 1996); *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988)), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The AAO notes that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. at 637. Although counsel claims that that the petitioner's previous counsel misrepresented or failed to provide information that relates directly to the beneficiary's eligibility for L-1A classification, counsel has not satisfied the three requirements set forth above.

As noted above, while it appears that counsel intended to further articulate the basis for the appeal by submitting a brief and/or additional evidence, the AAO has received no brief or evidence. Absent actual evidence, the assertions of the petitioner's new counsel do not establish the truth of the matter asserted. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.