

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

[REDACTED]

DATE: **NOV 09 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[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 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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will 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, an Indiana corporation, is involved in the production of small greenhouse plants. The petitioner claims to be an affiliate of [REDACTED] located in [REDACTED]. The petitioner seeks to extend the beneficiary's employment as its agricultural engineering manager for a recaptured period of 533 days.

The director denied the petition on September 15, 2011, concluding that the petitioner failed to establish the beneficiary will be working primarily in a qualifying executive or managerial capacity. In denying the petition, the director found that the petitioner failed to provide a more detailed description of the beneficiary's job duties. The director also found that the petitioner failed to provide a summary of the job duties for all of the employees in the beneficiary's immediate division, therefore leaving the director unable to determine if the beneficiary supervised the work of other managerial or professional employees.

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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. On July 22, 2011, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). Specifically, the director requested, *inter alia*: 1) a more detailed specific description of the beneficiary's duties in the U.S., identifying the percentage of time required to perform the duties of the managerial or executive position; and 2) a summary of the duties and education level for the employees in the beneficiary's immediate division, department or team.

In response to the RFE, the petitioner re-submitted the same list of job duties for the beneficiary, with the exception of a few minor changes, and did not provide the requested percentage of time required to perform each duty. The petitioner did not provide a summary of the duties for the employees in the beneficiary's immediate division, department or team, as requested. The director denied the petition after noting that the petitioner failed to submit the requested evidence.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested

evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

The AAO agrees with the director that the initial evidence and the petitioner's incomplete response to the request for evidence do not support a finding that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner did not submit all of the requested evidence and the unsupported assertions and explanations provided on appeal are insufficient to overcome the evidentiary deficiencies noted in the director's decision. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

On appeal, counsel for the petitioner asserts that the director's RFE was too broad and unspecific, and therefore the director should have issued a second RFE instead of denying the petition. However, counsel's assertions are unpersuasive. The director's RFE was clear and unambiguous in requesting a more detailed description of the beneficiary's duties in the U.S. which identified the percentage of time required to perform the duties, and a summary of the duties for the employees in the beneficiary's immediate division, department or team. The petitioner failed to comply with this portion of the RFE.

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. Due to the failure to provide the requested evidence, the petitioner has not met its burden.

The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is now entitled to the status sought under the immigration laws.

ORDER: The appeal is dismissed.