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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

[Redacted]

DATE: **SEP 07 2012** Office: VERMONT 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, Vermont 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 dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment 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 [REDACTED] corporation, is an import/export firm. It claims to be a branch of [REDACTED] Ltd. located in [REDACTED]. The petitioner seeks to employ the beneficiary as its Chief Executive Officer for an additional period of three years.

The director denied the petition on September 3, 2010 concluding that the record does not establish that the beneficiary has been, or will be, employed in an executive capacity; that the business is financially viable; or that the business is paying any wages as stated. In denying the petition, the director noted the petitioner's failure to submit any evidence that the beneficiary is acting in an executive capacity as requested by the director. The director also found inconsistent evidence regarding the number of employees as stated by the petitioner, as well as wages paid to those 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. The petitioner submits a brief and evidence in support of the appeal.

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 the 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.

Counsel for the petitioner submits information on appeal "proving that the Beneficiary is working with the Petitioner in executive capacity," as well as evidence that the petitioner "has enough resources to pay proffered wages to Mr. [REDACTED]." Counsel for the petitioner states that this information is being submitted for the first time on appeal for the following reason:

There was some communication gap (between the paralegal who filed the Petition and the petitioner's representative) also and the Petitioner could not realize the nature of required documents by the USCIS.

The evidence submitted by the petitioner on appeal will not be considered for any reason in this proceeding. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The petitioner submits a job description for the beneficiary, a letter from the chairman of the employer overseas, and membership certificates from overseas organizations for the beneficiary. On ██████████ 2010, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Specifically, the director requested *inter alia* the following: "the job titles and the duties with the percentage of time dedicated to each duty to be performed by each employee." The petitioner failed to submit the requested evidence and now submits a list of responsibilities, without the requested percentage of time dedicated to specific duties, for the beneficiary on appeal. The petitioner provided no information about the duties of the office manager/delivery person, the salaried east coast sales representative, or the unsalaried west coast sales representative either in response to the RFE or on appeal.

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 information regarding the duties of the petitioner's employees. 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, therefore, appropriately denied the petition for failure to submit requested evidence.

In addition to the failure to submit the requested evidence, the petitioner does not dispute the director's statements that the business was not financially viable. Counsel for the petitioner states on appeal that "the Petitioner was capable to pay [*sic*] proffered wages from the priority date through 2009." In support of the appeal, the petitioner submits information relating to the petitioner's ability to pay the beneficiary's wages. Specifically, the petitioner submits a financial report, full details of receivables, federal tax returns, and sales contracts for the petitioning entity.

The director's denial rests on the issue of whether the evidence establishes that the beneficiary is acting in an executive capacity, and the fact that the record does not establish that the business is financially viable. On appeal, counsel addresses an issue not raised in the director's denial, whether the petitioning entity has the ability to pay the proffered wage. Counsel's argument clearly fails to address the larger conclusions of law or statement of fact made by the director in his denial regarding the financial viability of the business generally.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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 dismissed.