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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: SEP 14 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:

SELF-REPRESENTED

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 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 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 New York corporation established in 2009, is in the business of manufacturing, importing, and exporting textiles. The petitioner has employed the beneficiary as its director since November 2009 and now seeks to extend his L-1A status for three additional years.

The director denied the petition on November 19, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director observed that the beneficiary is performing, and will continue to perform, the day-to-day operations of the U.S. business. The director also observed that, at the time of filing the extension, the petitioner had only two employees: the beneficiary and a warehouse clerk.

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 indicated on Form I-290B, Notice of Appeal or Motion, that it was filing this appeal because "we have now 5 employees and thing[s] have changed since we initially filed [the] extension." The petitioner provided the following explanation:

I am not denying the fact that [the beneficiary] was not performing duties designed for an executive. He was doing everything from needle to ship. On day one he had to answer phone calls. *Attach the cable to the phone. Buy a computer for him self [sic]. Get a phone line connection. Meet the immigration attorney. Attend the Trade Show in Las Vegas.* He had to perform these duties since we wanted him to stay on top of everything and also there was no one else to perform them. In order for us to hire someone we had to test the waters ourselves and had to figure out why, what, where, when and who's of our requirements. Now that we have hired 5 employees [the beneficiary] is obviously not performing those duties and has delegated work to other individuals....

The 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.

On appeal, the petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The petitioner admitted the facts and conclusions stated in the director's denial. Inasmuch as the petitioner has not identified specifically an erroneous conclusion of law or statement of fact as a basis for the appeal, the appeal must be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v).

The AAO notes that although the petitioner has hired additional employees since it filed the instant petition, this does not overcome the denial of the petition. The petitioner must establish eligibility at the time of filing; a new petition cannot be approved at a future date, or on appeal, 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). Furthermore, even though the petitioner claimed that it was "misguided or mislead" when it filed for the extension, this too does not overcome the denial of the petition.

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.