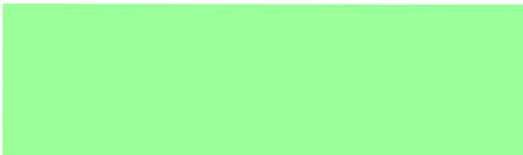


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **APR 05 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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:

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,

Ron Rosenberg

Acting 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, a Michigan corporation established in January 2012, is a granite and stone manufacturing, construction, and installation business. The petitioner claims to be a new branch office of [REDACTED] located in Syria. The petitioner seeks to employ the beneficiary as its Chief Executive Officer for a period of two years.<sup>1</sup>

The director denied the petition on July 25, 2012, concluding that the petitioner failed to establish the beneficiary was employed in a qualifying executive or managerial capacity with the foreign employer or that it has a qualifying relationship with the foreign employer. The director also found that the petitioner failed to provide evidence that was specifically requested in a request for evidence ("RFE") issued on April 19, 2012. Specifically, the director observed that the petitioner failed to provide the requested detailed list of owners for the foreign entity, evidence of the foreign entity's capital contribution to establish the U.S. office, a detailed description of the duties the beneficiary performed abroad, the foreign entity's organizational chart, or information regarding the number and types of employees the beneficiary supervised.

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, counsel asserts that the evidence of record establishes that the petitioner is a branch office of the Syrian entity, and contends that the director overlooked the petitioner's submission of a list of owners for the foreign company. In addition, counsel contends that the petitioner provided evidence that the beneficiary is the Chief Executive Officer of the foreign entity and established this fact through submission of an executive summary for the company and printouts of information from the company's website. In support of the appeal, the petitioner submits: (1) a copy of letter from the petitioner's bank indicating that it has an account balance of \$40,000 as of August 12, 2012; and (2) a copy of evidence previously submitted in response to the director's RFE.

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.

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

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Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. The director properly denied the petition based on the petitioner's failure to submit requested evidence that is material to establishing the petitioner's and beneficiary's eligibility for the classification sought. Counsel's assertions that the petitioner provided all required evidence are not persuasive.

As noted, on April 12, 2012, 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* a more detailed position description; a copy of an organizational chart showing all employees in the beneficiary's immediate divisions, department, or team; and a letter from the foreign employer that specifies why the beneficiary was selected for the position with the U.S. entity. Furthermore, the petitioner was instructed to provide evidence that the petitioning company has been authorized to operate as a branch office in the State of Michigan; a detailed list of the owner's names for both the foreign company and the U.S. company and what percentage they own; and evidence that the foreign entity provided the initial capital contribution to the U.S. entity. In response, the petitioner failed to provide the requested evidence. Instead the petitioner submitted a document showing the names, titles, and percentage ownership of individuals owning [REDACTED] without specifying whether the document related to the foreign or U.S. entity and account balance statements from the foreign entity. 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.

On appeal, counsel for the petitioner clarifies that the list provided with the initial petition reflects the ownership percentage of the foreign entity. The petitioner, however, fails to provide the evidence regarding the U.S. entity's authorization to conduct business as a foreign branch in the state in which they intend to operate. Instead, the petitioner resubmits articles of incorporation showing that the U.S. entity is in fact a newly formed corporation, and not a branch office of the foreign employer. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). Instead, the petitioner must establish that it is either a subsidiary or affiliate of the foreign entity, as those terms are defined at 8 C.F.R. § 214.2(l)(1)(ii).

According to the petitioner's Articles of Incorporation, the company is authorized to issue 60,000 shares of common stock. The record as presently constituted contains no evidence of the ownership of the U.S. company, such as stock certificates, a stock transfer ledger, or the corporation's by-laws. Absent evidence that the petitioner is either majority-owned by the Syrian entity or evidence that both entities are owned and controlled by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity, the petitioner has not established the existence of a qualifying parent-subsidiary or affiliate relationship.

Furthermore, counsel for the petitioner resubmits the same position description that was previously provided for the beneficiary's position with the foreign employer. This position description generally states that the beneficiary "oversees the day to day operations and advised on the direction of the company." While counsel further relies on an "executive summary" published on the company's website and submitted in response the RFE, this summary does not provide the level of detail specifically requested in the RFE, as it merely states that the beneficiary "takes care of all accounting" and "takes care all divisions in the company."

The fact that the beneficiary has an executive title and manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meanings of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738.5739 (Feb. 27, 1987). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The record must establish that the majority of the beneficiary's actual duties are managerial or executive in nature. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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 its failure to provide the requested evidence, the petitioner has not met its burden. Accordingly, the appeal will be dismissed.

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.