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

(b)(6)

DATE: APR 2 2 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

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, Vermont Service Center, denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on November 8, 2012, the AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider, in accordance with 8 C.F.R. § 103.5. The AAO will grant the motion to reconsider and affirm its previous decision.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 Florida limited liability company established in December 2009, states that it engages in management consulting and import/export consulting. The petitioner claims to be an affiliate of [redacted] located in Kyiv, Ukraine. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend his employment in the position of president/chief executive officer for three additional years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in an executive or managerial capacity. The director noted that the petitioner failed to establish that the business can financially support the beneficiary's position and the company's additional three employees. The director also noted that the petitioner failed to provide an acceptable lease to demonstrate that it had maintained sufficient physical premises in order to conduct its business and support the beneficiary's claimed position.

On appeal, counsel for the petitioner asserted, "that there is sufficient space within which to conduct business, that the company is actively conducting business beyond simply having an agent here, that the company is able to adequately remunerate the beneficiary, [and] that he is functioning at an executive level and will continue to do so." Counsel for the petitioner submitted a brief and additional evidence on appeal.

The AAO dismissed the petitioner's appeal on November 8, 2012 concluding that the petitioner failed to establish that the beneficiary will be employed in an executive or managerial capacity. The AAO thoroughly addressed counsel's objections to the denial of the petition. The AAO found that the petitioner did not provide any substantive details regarding the beneficiary's actual duties or the amount of time he allocates to specific duties, such that it could be concluded that he performs primarily qualifying tasks. The AAO further found that, although the petitioner indicated that it engaged in the provision of import consulting, export consulting, sales consulting and management consulting services, it only claimed to employ sales consultants; thus, it remained unclear who, if anyone, would be available to relieve the beneficiary from performing other consulting services offered by the company.

The petitioner subsequently filed the instant motion to reopen and reconsider the AAO's decision of November 8, 2012. On motion, counsel for the petitioner submits a brief in which she clarifies the petitioner's financial situation and reiterates that the beneficiary will be employed in a qualifying executive capacity.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect

> application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel for the petitioner asserts that the beneficiary meets the various definitions of executive as provided by the U.S. Department of Labor. Counsel contends that "the Service has failed to recognize the scope and complexity of the Petitioner's business, the caliber and number of its employees, its significant customers and contracts, [and] the nature of its investment into the U.S. marketplace. . . ." The petitioner submits a letter from its vice president, and from the beneficiary, addressing the petitioner's financial status and current contracts. Both letters contain vague references to the beneficiary's executive position at the U.S. company, however, the information presented is not sufficient to overcome the reasons for dismissal of the underlying appeal.

The AAO's decision clearly indicated that the petitioner failed to provide sufficient information to demonstrate that the beneficiary's position and duties at the U.S. company qualify him as an executive or as a manager. Specifically, as noted above, the AAO found that the petitioner did not provide any substantive details regarding the beneficiary's actual duties or the amount of time he allocates to specific duties, such that it could be concluded that he performs primarily qualifying tasks. This failure of documentation is important because several of the beneficiary's assigned tasks do not fall directly under traditional managerial or executive duties as defined in the statute. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial or executive in nature, and what proportion are actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* at 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The AAO further found that the petitioner did not establish that it employs staff to perform several of the types of consulting services claimed to be provided by the company. Counsel's citations to generic definitions for "executive" occupations are not relevant to a determination of whether the beneficiary in this matter will be employed in a qualifying managerial or executive capacity, as the AAO reviews the beneficiary's actual duties within the context of the petitioning company. When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

Although the AAO will affirm its previous decision to dismiss the appeal, we note that the decision briefly addressed the issue of the petitioner's financial status and its ability to remunerate the beneficiary and its other employees. The AAO found that the evidence presented "rais[ed] questions about the U.S. company's actual finances." On motion, the petitioner provides a viable explanation of its financial activities and financial status. The petitioner explains that it has multiple operating accounts in order to track its finances by operational department within the U.S. company. The beneficiary, as the owner of the U.S. company further explains how the financial transactions are processed and accounted for depending on sales generated from

U.S. clients or overseas clients. The AAO finds the petitioner's explanation sufficient and withdraws its comments with respect to the petitioner's financial status.

In the instant matter, counsel contends that USCIS did not consider the evidence in its entirety when reaching its decision. The record reflects AAO did address all of counsel's objections to the director's decision in its appellate decision and noted all of the deficiencies in the record upon dismissal of the appeal. Here, neither counsel nor the petitioner adequately addresses the deficiencies presented in the AAO's dismissal of the appeal and therefore have not overcome those deficiencies or the AAO's finding that the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

IV. CONCLUSION

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 met that burden. Accordingly, the AAO's decision will be affirmed.

ORDER: The AAO's decision dated November 8, 2012 is affirmed.