(b)(6)

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 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:

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 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, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition will remain denied.

This nonimmigrant petition was filed 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, on the Form I-129, Petition for a Nonimmigrant Worker, states that it operates a cosmetology and hair salon. It seeks to extend the beneficiary's L-1A status so that he can continue to serve as its manager.

The director denied the petition based on the following adverse findings: (1) the petitioner failed to establish a qualifying relationship with the foreign entity; and (2) the petitioner failed to establish that the beneficiary had been and would be employed in the United States in a managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO.

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.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must further establish that the beneficiary seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

On the initial Form I-290B, the petitioner asserts generally that the director: (1) failed to consider that the extent of business and revenue had increased since the beneficiary began his duties with the petitioner; (2) failed to consider the evidence of the petitioner's business in Maryland as well as Virginia; and (3) failed to consider that the beneficiary's responsibilities and duties are managerial and "not anything else."

In a package received by United States Citizenship and Immigration Services (USCIS) on March 8, 2013, almost six months subsequent to the date of the decision, the petitioner provided an uncertified 2011 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, for the petitioner's alleged owner, showing a loss of $53,387. The record on appeal also includes a balance sheet for a hair salon as of December 31, 2011 and two December 2012 bank statements for businesses operated in Maryland. The petitioner does not explain the significance of the IRS income tax return. Moreover, the record does not reflect that the beneficiary is or would be a manager or an

employee of the Maryland businesses. Further, as the director found, the petitioner in this matter has not provided documentary evidence establishing the relationship among the various operations referenced, the petitioner, and the foreign entity. 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)).

The petitioner also submits an organizational chart depicting the beneficiary as a manager with a barber, senior hair stylist, and a receptionist reporting to him. The petitioner initially and in response to the director's request for evidence identified only four personnel working in the petitioner's Virginia salon and did not include a tertiary level of personnel. The petitioner's addition of an assistant stylist who reports to the senior hair stylist subsequent to the filing of the petition is thus not probative. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date 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). Further, we observe, the director specifically requested that the petitioner submit an organizational chart and although the requested organizational chart was eventually submitted, it was submitted for the first time on appeal. 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 this document submitted on appeal.

The petitioner also provides a revised description of the beneficiary's duties, excluding any reference to the beneficiary's previously described stylist duties on appeal. Although the revised description lists some duties that could be considered managerial in nature, the majority of the duties depict the beneficiary performing routine tasks associated with operating a salon, such as ensuring maintenance jobs are carried out and the salon is clean, ensuring the maintenance of paperwork procedures related to appointments and bills, attending demonstrations, promoting the company, and performing the banking functions related to the Virginia salon. Accordingly, on appeal, not only does the petitioner fail to describe duties that are primarily managerial in nature, the petitioner attempts to materially change the beneficiary's level of authority and his associated job duties. However, a petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp., supra.* A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). In this matter, the initial and subsequent descriptions of duties do not support a conclusion that the beneficiary has or will perform primarily managerial or executive duties for the petitioner.

In this matter, the director properly determined that the record did not include documentary evidence establishing the qualifying relationship between the petitioner and the foreign entity. The petitioner does not address this issue on appeal. The director also properly analyzed the duties of the beneficiary and the petitioner's claimed operations in Maryland and Virginia, identified the

deficiencies in the record, and correctly concluded that the record did not demonstrate that the petitioner's current operations could support an employee in a managerial or executive capacity. The petitioner, in this matter, does not provide further probative evidence or argument addressing the director's denial on this issue on appeal.

The record on appeal does not resolve the deficiencies in the record identified by the director. The petitioner does not identify an erroneous conclusion of law or statement of fact in the director's denial as a basis for the appeal. As the petitioner does not present additional evidence or argument on appeal sufficient to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.