(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: AUG 1 3 2013 OFFICE: CALIFORNIA 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO**.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 classify the beneficiary as a 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 states that it engages in the manufacture and market of production equipment. The petitioner claims to be an affiliate of [redacted] located in the United Kingdom. The petitioner seeks to employ the beneficiary as its accounts manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary had an approved petition according him managerial or executive status at least six months prior to the expiration of his or her fifth year of stay and, as such, is not eligible for the reclassification to that of a manager or executive and requested extension of stay. The director found that the petitioner substantiated the claim that the beneficiary would be employed in a managerial or executive capacity; however, the failure to file the amended petition deprived the beneficiary of eligibility to change status from specialized knowledge to manager or executive.

Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, to appeal the denial of the underlying petition. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. The petitioner marked the box at part two of the Form I-290B to indicate that a separate brief or evidence was submitted simultaneously with the form.

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.

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. 8 C.F.R. § 103.3(a)(1)(v).

On appeal, counsel for the petitioner submits a one-page brief that states:

> This matter involves the request of the petitioner to move formally to the L-1A status, which, as the enclosed shows, truly reflects his work history more than six months prior to the expiration of his present status. . . .
>
> In the present matter it would have been a practical hardship, if not an impossibility, to have had a petition filed <u>and approved</u> within the guidelines set out in the denial. The closeness of the promotion . . . coupled with CSC backlogs would not have produced what the denial required. By necessity, any application would have required equitable relief by the Service, which we believe this case merits. Unfortunately, the CSC denied the petition outright

> without providing any opportunity to give additional information or to make any amendments to the petition, which we feel to be unjust and against Service policy to issue an RFE, as opposed to a denial as a first action on a file.

(Emphasis in original.)

In the instant matter, counsel for the petitioner has not specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Counsel's statements are not sufficient for an appeal. The director's decision includes a discussion of the evidentiary deficiencies present in the record.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the petition. The cited regulation states, "[i]f the record evidence establishes ineligibility, the application or petition will be denied on that basis." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. Here, counsel has conceded that the petitioner failed to submit the required amendment petition six months prior to the expiration of the beneficiary's current status, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

As no erroneous conclusion of law or statement of fact has been specifically identified and as no additional evidence is presented on appeal to overcome the deficiencies addressed in the director's decision, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

Additionally, the record contains inconsistent information regarding the start date of the beneficiary's promotion from a specialized capacity position to a managerial or executive capacity position. On the Form I-129, the petitioner stated that the beneficiary would commence his new position on at the expiration date of the beneficiary's current L-1B status. In its letter of support, the petitioner referred to the beneficiary's promotion and duties as "accounts manager" in a future tense stating, "[i]f this application is approved, [the beneficiary] will be promoted . . ." indicating that he had not assumed the position yet. The petitioner indicated that the beneficiary's current position at the time of filing was applications engineer, and it did not claim that this position is in a managerial capacity.

The director denied the petition and found that 8 C.F.R. § 214.2(l)(15)(ii) requires the beneficiary to have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years, and that the change must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred; in this case, six months prior to the date of the underlying petition.

On appeal, counsel for the petitioner states that the petitioner demonstrate that the beneficiary " was in fact in the new position six months prior to the expiration of the present status ."

Here, counsel's assertions on appeal contradict the information presented by the petitioner with the underlying petition. The petitioner stated unequivocally that the beneficiary's new position is account manager and that he would be promoted to such position only if USCIS granted the requested L-1A status. 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). 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 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.