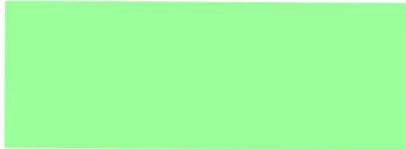




U.S. Citizenship
and Immigration
Services

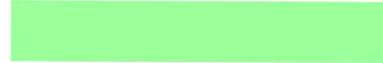
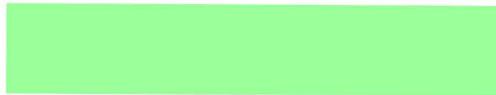
(b)(6)



DATE: OFFICE: VERMONT SERVICE CENTER

AUG 29 2013

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
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 employ 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, a New York corporation, states that it engages in importing cell phone and computer accessories and furniture from China and other countries. The petitioner claims to be a subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary as the president of its new office in the United States.

On March 14, 2013, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity within one year of the approval of the petition. In denying the petition, the director found that the position description provided for the beneficiary's proposed position was brief and lacked sufficient detail about the duties to be performed by the beneficiary on a daily basis. The director further observed that the petitioner failed to provide the requested detailed position descriptions for all proposed employees, and instead submitted brief position descriptions for each proposed position. Finally, the director noted that the petitioner's business plan lacks details about the start-up of the business and does not include a timetable for each proposed action for the first year of operations.

On April 3, 2013, counsel for the petitioner submitted the 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 brief and/or additional evidence would be submitted to the AAO within 30 days. However, counsel crossed out the number 30 and wrote in the number 90 to indicate that the information would be submitted within 90 days. The record indicates that the petitioner did not file a brief or supplemental evidence within the allowed timeframe. The AAO will consider the record complete as presently constituted.

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.

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 the Form I-290B, counsel for the petitioner states:

The Petitioner is appealing the decision of USCIS dated March 14, 2013 on the grounds that it was arbitrary, capricious and against the weight of the evidence.

The decision erroneously concludes the beneficiary fails to meet the definition of an L-1 non-immigrant under INA section 101 (a) (15) (L). More specifically, the decision states that the evidence submitted does not prove that within one year of the approval of the petition, the beneficiary's position would be primarily managerial or executive in nature. . . .

* * *

Petitioner has secured a lease for the store front and purchased significant goods to stock the store, proving their physical premises in Buffalo, New York. The beneficiary has successfully proven he has been employed for over one year with the Iraqi affiliate [*sic*] corporation in a managerial or executive capacity. The beneficiary's proposed duties are mainly managerial or executorial in nature, and the proposed organization of [the petitioner] allows for the beneficiary to act in a purely managerial or executive role from the start of his L-1A status. The Petitioner has successfully proven the size of the U.S. investment and the foreign entity's financial ability to pay the beneficiary and to begin doing business in the U.S. Lastly, the Petitioner has successfully proven the foreign entity's organizational structure.

We intend to show that the combination of the initial petition and the additional submitted evidence proves that the beneficiary satisfies all requirements of the statutory definition of an L-1A intracompany transferee. We will also prove that the previously submitted evidence substantially shows that within one year from the approval of the petition the U.S. operation will support the beneficiary in a managerial or executive position.

In the present matter, neither counsel nor the petitioner have specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. A simple, blanket assertion that the director's decision was erroneous is not sufficient for an appeal. The director's decision includes a thorough discussion of the evidentiary deficiencies and inconsistencies present in the record. Counsel's brief statement on appeal fails to acknowledge these deficiencies and inconsistencies. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. 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 decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.