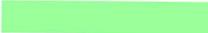




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 19 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 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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B 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 Delaware corporation, states that it operates as an "e-global solutions provider." The petitioner claims to be the parent company of [REDACTED] located in India. The beneficiary, a senior consultant, was previously issued an L-1 visa under the petitioner's Blanket L petition and the petitioner now seeks to extend his L-1B status for an additional 26 months. The petitioner states that the beneficiary will be stationed primarily offsite at the Lincolnshire, Illinois worksite of its client, [REDACTED] ("the unaffiliated employer").

The director denied the petition, concluding that the petitioner failed to establish that the placement of the beneficiary's worksite of the unaffiliated employer satisfies the conditions of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act of 2004. In denying the petition, the director found that the service being provided by the petitioner to the unaffiliated employer essentially consists of programmers or consultants for hire to develop, modify, enhance, and/or maintain the unaffiliated employer's already existing system, software, and/or third party software rather than develop the petitioner's own software. The director emphasized that the petitioner submitted a statement of that was not signed or executed by the appropriate party of each company. The director further observed that the petitioner's statement of work indicates that it operates pursuant to all terms and conditions of the master services agreement between the two parties, however, the petitioner failed to submit said master services agreement. In the absence of this documentation, the director noted that "USCIS cannot determine if there is a contract between the petitioner and the client company to establish that the beneficiary is not performing labor-for-hire services at the client company."

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.

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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. For the first time on appeal, the petitioner submits previously requested evidence for review. The submitted evidence will not be considered in this proceeding.

On March 16, 2011, 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).

The director requested, *inter alia*, evidence to establish that the beneficiary's placement at the worksite of the unaffiliated employer meets the conditions set forth at Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act of 2004. Under this provision, a beneficiary is ineligible for L-1B classification if his or her placement at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge to the petitioning employer is necessary.

Specifically, the director instructed the petitioner to provide contracts, statements of work, work orders, and service agreements between the petitioner and the unaffiliated employer for the specific services or products to be provided. In response, the petitioner failed to provide all of the requested evidence. Instead, the petitioner submitted a copy of its statement of work that was not signed and executed by the appropriate parties. Additionally, the statement of work referenced a master services agreement that was not provided for the record rendering the record incomplete for the director to make a proper adjudication. The director denied the petition after noting that the petitioner failed to submit the requested evidence and as such, could not determine what the specific terms and conditions are in regards to the property rights, patent rights, copyrights, intellectual rights, etc. of the systems, applications, and/or software on which the beneficiary would be working.

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 acknowledges that the petitioner's response to the RFE did not include all of the agreements between the petitioner and the third party. The petitioner submits a copy of the signed and executed Professional Services Agreement with the unaffiliated third party, and an executed copy of the previously submitted statement of work. Counsel contends that, based on this newly submitted evidence, it is clear that the beneficiary's placement at the petitioner's client's worksite is made in connection with the delivery of a product and related services that require specialized knowledge of the petitioner's services, unique techniques, management, and methods.

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 the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Further, the AAO notes that the executed statement of work provided for the first time on appeal was signed on March 29, 2011, two months after the petition was filed, and subsequent to the petitioner's submission of its response to the director's request for evidence. Therefore, it remains unclear whether this assignment was in place for the beneficiary at the time of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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).

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 dismissed.