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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: **SEP 27 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 (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 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, a New York corporation, states that it engages in international trading. The petitioner claims to be a subsidiary of [REDACTED] located in Shanghai, China. The petitioner seeks to employ the beneficiary as the president of its new office. As the beneficiary is currently in the United States pursuant to an F-1 student visa, the petitioner requested a change and extension of his nonimmigrant status.

On September 10, 2012, the director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary had at least one year of full-time employment with a qualifying entity within the three years preceding the filing of the petition; and (2) that the petitioner will employ the beneficiary in a qualifying managerial or executive capacity within one year of the approval of the petition. The director also determined that the beneficiary had violated his F-1 status by engaging in unauthorized employment and denied the petitioner's request to change and extend the beneficiary's status. While the aforementioned two issues are appealable to the AAO, there is no appeal from the denial of an application for extension of stay filed on Form I-129. *See* 8 C.F.R. § 214.1(c)(5).

In denying the petition, the director found that the beneficiary worked for no more than 3 ½ months at a time in China for the overseas employer since his first admission to the United States as an F-1 student in May 2007, and therefore does not have one year's continuous full-time employment abroad in the last three years. The director acknowledged the petitioner's claim that the beneficiary has continued to work for the foreign employer on a full-time basis while completing his studies in the United States and during school breaks. However, the director found that there was insufficient evidence that the beneficiary could be considered a full-time managerial employee of the foreign entity while in the United States as a student and further noted that the only documentation offered to support the claimed overseas employment was a series of internally-generated payroll summaries from 2011 and 2012. The director further noted that the petitioning U.S. company has not been doing business for at least one year as of the date of filing, and therefore, is considered a new office for immigration purposes. The director found that the petitioner's descriptions of its business and modes of operation are extremely vague. The director noted that the record is therefore insufficient to establish that the petitioner's scope and/or structure will be able to support the intended position within one year of the petition's approval.

On October 5, 2012, the petitioner 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 brief and/or additional evidence is attached. 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 appeal, the petitioner has submitted a short brief in which it states:

We find it difficult to accept this decision because the immigration officer presiding this case did not correctly interpret the law and so wrongfully deemed 'the beneficiary appears to have engaged in unauthorized employment while in the [US] as a full-time student. There is no legal provision allowing an F-1 student to accept or to engage in employment other than for curricular or optional practical training, or for reasons of economic necessity and, in these [sic] case, prior authorization must be obtained. The fact that the employer was physically outside the United States is not relevant. The beneficiary thereby was in violation of his student status during the entire period in which he engaged in this employment, which appears to have been his entire stay in the United States.' This immigration officer incorrectly inflated the scope and jurisdiction of this law.

* * *

Conclusion: Immigration law's restricted employment only points to American employers and work compensated by America [sic] employer, whereas volunteering in America or working for China and receiving compensation from China is outside of the immigration law's jurisdiction. This case's beneficiary is employed by the parent company located in China and is being compensated by the company in China and is therefore not under the 'illegal employment' jurisdiction of the immigration law.

The petitioner's brief addresses the director's finding that the beneficiary engaged in unauthorized employment, a finding that led to the denial of the petitioner's request that USCIS grant the beneficiary a change and extension of his nonimmigrant status. As discussed, the director's denial of a request for an extension of status is not appealable and is therefore outside of the purview of the AAO. See 8 C.F.R. § 214.1(c)(5).

The petitioner has failed to address the two grounds for denial of the underlying petition, and states "we no longer want to argue over the other disagreeing opinions and perspectives brought up by the immigration officer." The petitioner indicates that it believes the evidence of record is sufficient and that the officer decided to "nitpick at other parts of the case."

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. 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 present in the record. The petitioner's letter on appeal fails to acknowledge these deficiencies.

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.