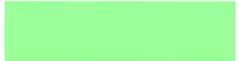


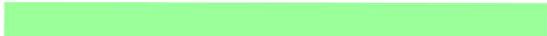


**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **APR 24 2014** 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 employ 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, a Florida corporation established in September 2010, states that it engages in the distribution of photo booths. The petitioner claims to be a subsidiary of [REDACTED] located in Barcelona, Spain. The petitioner seeks to employ the beneficiary in the position of general manager for a period of three years.

The director denied the petition on three alternative grounds, concluding that the petitioner failed to establish that: (1) the beneficiary was employed by a qualifying foreign entity for one continuous year within the three years prior to filing the petition; (2) the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge; and (3) the beneficiary would be employed primarily in a qualifying managerial or executive capacity in the United States. In denying the petition, the director emphasized that the petitioner failed to provide requested evidence, including evidence of the beneficiary's employment abroad, detailed position descriptions for the beneficiary's foreign and proposed U.S. positions, organizational charts for the petitioner and foreign entity, and information regarding the beneficiary's current and proposed subordinate staff, including their job duties and educational levels. As such, the director found the record insufficient to establish that the beneficiary was employed abroad by the foreign entity or that he has been or would be employed in a qualifying 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 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.

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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. On appeal, the petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. In fact, the petitioner has not raised any objection to the director's decision, but instead indicates that it is submitting "additional evidence not originally presented." The submitted evidence was previously requested by the director on February 7, 2013 and will not be considered in this proceeding. The appeal will be summarily dismissed.

On February 7, 2013, 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). Specifically, the director requested, *inter alia*, (1) payroll documents to establish that the beneficiary was employed by a qualifying foreign entity and that said employment was full-time for one continuous year within the three years prior to filing of the petition; (2) a letter from an authorized representative of the foreign entity articulating the managerial decisions and typical managerial responsibilities held by the beneficiary on behalf of the foreign entity; (3) answers to several specific questions presented by the director relating to the beneficiary's managerial position abroad and his supervision of subordinates; (4) an organizational chart for the foreign entity; (4) a list of U.S. employees, identified by name and position title; (5) a position description for each of the U.S. employees (to include the beneficiary), including qualifications of all employees, hiring requirements for each position, and a breakdown of the number of hours devoted to each employees' job duties on a weekly basis; (6) a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis; and (7) an organizational chart for the U.S. company.

In response, the petitioner failed to provide any of the above requested evidence. Instead, the petitioner wrote one-word answers to the listed questions about the beneficiary's foreign employment and did not describe his duties abroad or proposed duties in the U.S. The director denied the petition after noting that the petitioner failed to submit the requested evidence and as such, he could not determine that the beneficiary is eligible for the L-1A classification.

The director correctly found that such information was critical to the petitioner's claim that the beneficiary was employed abroad by a qualifying foreign entity and has been employed abroad and will be employed in the United States in a qualifying managerial or executive capacity. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner failed to document what proportion of the beneficiary's duties has been allocated to managerial functions and what proportion has been non-managerial. The petitioner provided a very broad and vague list of duties for the beneficiary's foreign employment on the Form I-129 and failed to provide details or quantify the amount of time the beneficiary spends on specific tasks. The petitioner provided an equally broad and vague position description for the beneficiary's proposed position in the United States, and again, failed to provide details or quantify the amount of time the beneficiary spends on specific tasks. This failure of documentation is important because the missing detail and information is critical to establishing the beneficiary's eligibility for the benefit sought. For this reason, the petitioner has not established that the beneficiary is primarily performing the duties of manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, the director emphasized that the petitioner failed to provide requested information regarding the job duties of the beneficiary's claimed subordinates, thus preventing any further inquiry as to whether the employees relieve him from performing non-qualifying duties, or whether the employees are actually managers, supervisors or professionals. This information was also critical because the beneficiary's vague position description did not clarify how or whether his subordinates would relieve him from performing non-qualifying operational and administrative tasks.

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, the petitioner submits the following statement, dated May 20, 2013:

First of all, I would like to apologize because I didn't submit all the information required in your Notice of Action dated February 07, 2013.

I attach the completed Form I-290B and the required information and documents.

The petitioner clearly indicates that it is submitting this information on appeal in response to the director's decision and acknowledging that it did not fully respond to the request for evidence ("RFE"). The petitioner now submits new responses to the director's specific questions listed in the RFE, a list of U.S. employees including very brief job duties and the beneficiary's allocation of hours devoted to each of his employees' duties, an organizational chart for the U.S. company, a statement from the foreign entity verifying the beneficiary's employment abroad, and pay stubs to the beneficiary from the foreign entity from January to December 2012.

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.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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). As the petitioner fails to identify with specificity an erroneous conclusion of law or a statement of fact on the part of the director as a basis for the appeal, the petitioner has not sustained that burden.

The petitioner is not precluded from filing a new visa petition that is supported by the required evidence that demonstrates the beneficiary is entitled to the status sought under the immigration laws.

**ORDER:** The appeal is summarily dismissed.