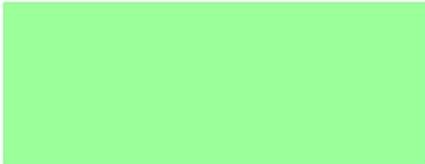


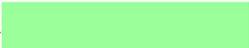
(b)(6)

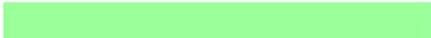
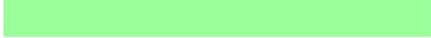
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

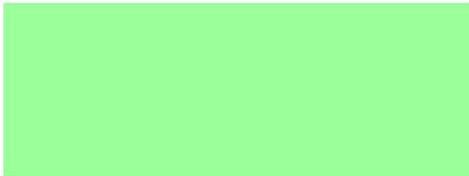


DATE: **JUL 11 2014** OFFICE: VERMONT SERVICE CENTER FILE: 

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, seeking to classify 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 New York corporation established in September 2007, states that it operates an "optical and vision care solutions" business. The petitioner claims to be an affiliate of [REDACTED], located in [REDACTED], Ukraine. The petitioner seeks to employ the beneficiary as its vice president of business development for a period of three years.

The director initially approved the petition and notified the petitioner on August 20, 2013. The L1A approval was valid from August 20, 2013 to April 30, 2015, and the consulate identified was [REDACTED] (Switzerland).¹ On August 22, 2013, the director issued a request for additional evidence ("RFE") instructing the petitioner to submit evidence of the beneficiary's managerial or executive position in the United States. On September 10, 2013, counsel for the petitioner requested clarification from the director in reference to receiving an RFE after receiving a Form I-797 Approval Notice of the instant petition. The director responded by stating that the officer initially approved the petition and later decided that additional evidence was necessary. The director further advised counsel that the approval notice was sent in error and that the petitioner should respond to the RFE in order for proper adjudication of the petition. Upon receipt of the petitioner's response to the RFE, the director denied the petition on November 8, 2013, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the beneficiary will be employed in a managerial and executive capacity at the U.S. company. Counsel submits a letter from the petitioner in support of the appeal.

In the instant matter, we may not reach the merits of this case because the director committed a procedural error. Once the director decides to reverse the decision on an approved nonimmigrant visa petition, the proper course of action is to issue a notice of intent to revoke and provide the petitioner an opportunity to rebut the proposed revocation. If the petitioner fails to overcome the issues raised in the notice, the director may then "revoke" the approval.

There are specific standards for revoking the approval of an immigrant or nonimmigrant visa petition. *See* 8 C.F.R. §§ 214.2(l)(9)(iii) (providing for revocation on notice based on "gross error" or other standards). If the director does not satisfy the mandated procedural requirements to revoke an approval, citing to "gross error" or another required standard, then the approved petition is not properly revoked.

For this reason, we will withdraw the decision of the director and remand the matter for further action. We will withhold any comment on the merits of this petition. However, if the director ultimately revokes approval, that decision should be certified to the AAO for review so that the petitioner does not have to pay a second appeal fee.

¹ It is noted that the petitioner's Form I-129 lists the U.S. Consulate in [REDACTED] Ukraine for notification of visa approval.

As always, 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.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with this decision.