



U.S. Citizenship  
and Immigration  
Services

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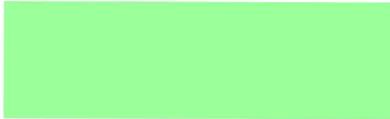
DATE: **MAY 30 2014**

OFFICE: VERMONT SERVICE CENTER

FILE: 

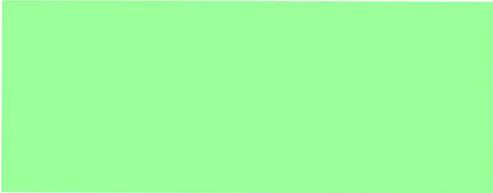
IN RE:

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.

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.

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, revoked the approval of the nonimmigrant visa petition and dismissed the petitioner's subsequent motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decisions will be withdrawn and the matter will be remanded to the director for further action and entry of a new decision.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to extend the beneficiary's status as an 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 Virginia corporation established in 2008, stated on the Form I-129 that it is engaged in computer hardware, peripheral sales and software development. It claims to be a subsidiary of [REDACTED] Ltd located in Nepal. The beneficiary was initially granted L-1A status to serve as the petitioner's general manager in 2009 and granted a subsequent extension of status through February 14, 2012. The petitioner filed the instant petition on January 17, 2012 to request an additional two-year extension.

The director initially approved the petition and granted the requested extension on May 4, 2012. On October 16, 2012, the director issued a notice of intent to revoke (NOIR) the approval of the petition based, in part, on information the beneficiary provided to a U.S. consular officer during his interview for a new L-1 visa. After receiving the petitioner's response to the NOIR, the director revoked the approval on December 17, 2012, concluding that the petitioner failed to establish: (1) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (2) that it is doing business as defined in the regulations. The petitioner subsequently filed a motion to reconsider accompanied by a brief and additional evidence. On June 10, 2013, presumably in response to the motion, the director issued a new decision revoking the approval of the petition which is identical in content to the decision issued on December 17, 2012.

The matter is now before the AAO on appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director overlooked material evidence that was submitted in response to the NOIR. Counsel further contends that the petitioner provided sufficient evidence that it is doing business as defined in the regulations, although it has expanded its operations to include real estate transactions in addition to its primary business of computer hardware and software. With respect to the director's finding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity, counsel asserts that the director placed undue emphasis on the number of employees and emphasizes that the beneficiary intends to hire additional employees when he returns to the United States.

## I. THE LAW

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 regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

The regulation at 8 C.F.R. § 214.2(l)(9)(iii)(A) provide for revocation on notice if the director finds that:

- (1) One or more entities are no longer qualifying organizations;
- (2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
- (3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations.
- (4) The statement of facts contained in the petition was not true and correct; or
- (5) Approval of the petition involved gross error . . .[.]

## II. PROCEDURAL HISTORY

The petitioner filed the Form I-129 on January 17, 2012. The petitioner stated that the beneficiary performs "[a]ll functions of General Manager including duties such as policy decision making on operating the US subsidiary, marketing, supervising and directing personnel, quality controlling, etc." Where asked to indicate its current number of employees, the petitioner stated "8 – projected." It did not include the requested gross and net annual income information on the Form I-129.

The petitioner's initial evidence included a description of the beneficiary's duties with a breakdown of the number of hours he allocates to each responsibility on a weekly basis. Briefly, the petitioner indicated that, on the beneficiary spends five hours per week making policy decisions, eight hours per week negotiating deals, five hours per week making decisions regarding promotional activities, two hours per week making decisions concerning quality control, one hour per week managing cash flow, eleven hours per week supervising personnel and making human resources decisions, eight hours per week on market research decisions, and one hour per week consulting with the directors of the foreign entity in Nepal.

The petitioner stated that the beneficiary will supervise a manager, [REDACTED] and provided a description of his duties noting that he performs day-to-day administration, defines responsibilities for sales and other personnel, implements procedures to improve productivity, performs market research, deals with customers and negotiates contracts, reviews sales and service contracts and physical stocks, arranges insurance, shipping, distribution and transportation, tracks imported goods, coordinates with custom clearing agents, plans and prepares operational budgets, and is engaged in daily sales, scheduling, distribution, information and data processing.

The petitioner submitted a chart labeled "Present Organization Chart, Staffing Level," and identified a total of 12 positions and seven (7) named employees, including the beneficiary, a manager [REDACTED] a business development manager [REDACTED] two consultants [REDACTED] and [REDACTED], two sales executives [REDACTED] and one vacancy), two assistant [REDACTED] and one vacancy), and job openings for one computer engineer and one administrative executive. The petitioner also submitted an organizational chart dated May 2011 which identifies the beneficiary as president, [REDACTED] as manager, [REDACTED] as business development manager, [REDACTED] as office assistant, two sales representatives [REDACTED] and [REDACTED], and one IT consultant [REDACTED].

The petitioner provided copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2010, which indicate that the company employed between three and six employees at that time. The petitioner did not provide any recent evidence of wages paid to employees.

The petitioner submitted evidence related to its purchase and sale of residential homes in 2010 and early 2011. In addition, it submitted copies of Product Development and Agent Assignment agreements with [REDACTED] Inc. and [REDACTED] Ltd., Hong Kong. These documents were signed in November 2009 and January 2010, respectively. The petitioner provided copies of two of its invoices, one issued to [REDACTED] in Nepal in July 2009, requesting \$13,000 payment for micro SD and memory cards, and issued one to [REDACTED] on March 10, 2010, requesting payment of \$367,760 for VOIP software. The petitioner also provided copies of six invoices issued to the petitioner by [REDACTED] requesting payment for software development services, and computer components. The latest invoice submitted was from March 2011. [REDACTED] billed the petitioner for approximately \$325,000 in products and services between August 2010 and March 2011.

In addition, the petitioner submitted letters from both [REDACTED] and [REDACTED]. In a letter dated May 20, 2011, [REDACTED] of [REDACTED] stated that "we have been purchasing software from [the petitioner] and using it for our organization." In a letter dated May 25, 2011, [REDACTED] s representative

stated it has regular business transactions with the petitioner, and acts as a supplier of computer-related products and software development services.

The director initially approved the petition on May 4, 2012. On October 16, 2012, the director issued a notice of intent to revoke (NOIR) the approval of the petition. The director notified the petitioner that the U.S. Consulate in Kathmandu, Nepal interviewed the beneficiary in connection with his L-1 visa application on May 25, 2012 and on June 14, 2012. The director advised that, during these interviews, the beneficiary stated that he was not in the computer hardware/software business, but was "flipping houses" while renting a room in a residential house that belongs to [REDACTED]. The director's notice of intent to revoke consisted of three brief paragraphs and did not specifically cite to the regulations governing revocations of L-1 petitions at 8 C.F.R. § 214.2(l)(9)(iii)(A). The director questioned whether the petitioner maintained sufficient physical premises and whether it was doing business as defined in the regulations.

The petitioner submitted a timely response to the NOIR. On December 17, 2012, the director revoked the approval of the petition. In the revocation decision, the director stated:

The response received on November 16, 2012, stating that there was only one (1) invoice for the entire year of 2011 fails to establish that the U.S. business is performing regular, systematic and continuous provision of goods and/or services pursuant to 9 FAM 41.54 N9.

The petitioner is for a U.S. business to be operating as a computer hardware peripheral sales and software company. In your response you state the beneficiary is in real estate business. The business is not doing what was petitioned for.

You stated the business was established in 2008 with a projected staff of eight (8) employees. You provided Form 941 for the first quarter of 2012 showing only two (2) workers and W-4's for 2011 with the most any worker making being \$4,000. This petition fails to establish that the beneficiary is primarily performing managerial/executive duties but performing the day – to-day duties for the business to operate. The petition fails to establish L-1A status pursuant to 9 FAM 41.54 N11.

Therefore, the approval of your petition is revoked.

This decision may not be appealed. . . .

The petitioner subsequently filed a motion to reconsider. On motion, counsel asserted that the petitioner was forthcoming with information that it had expanded its operations to include real estate transactions. Moreover, counsel contended that the director overlooked evidence submitted in response to the NOIR which shows the petitioner continued to do business in 2011 and 2012. Further, counsel asserted that the director placed undue emphasis on the number of payroll employees in the first quarter of 2012 in determining that the beneficiary would not be employed in a qualifying capacity.

On June 10, 2013, the director reissued the December 12, 2013 decision without acknowledging the petitioner's motion to reconsider or any assertions made therein. The director once again advised the petitioner that the decision could not be appealed.

The petitioner nevertheless filed an appeal, which is now before the AAO. On appeal, counsel reiterates the arguments made on motion and emphasizes that the director's decision dated June 10, 2013 failed to address the petitioner's evidence.

### III. ANALYSIS

Upon review, the director's decisions dated December 17, 2012 and June 10, 2013 will be withdrawn and the matter will be remanded to the director for further review and issuance of a new notice of intent to revoke.

As stated above, to properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). Here, the director revoked the approval of the petition, in part, based on a finding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. However, the director did not identify this ground for ineligibility in the NOIR and therefore did not provide the required notice of its intent to revoke the approval on this basis.

Moreover, in the revocation decision, the director did not acknowledge the petitioner's submission of evidence to establish that it was continuing to do business as defined in the regulations. Rather, the director's decision mischaracterizes the petitioner's response to the NOIR by attributing to the petitioner a statement that it never made. Specifically, the director stated "The response received on November 16, 2012, stating that there was only one (1) invoice for the entire year of 2011 fails to establish that the U.S. business is performing regular, systematic and continuous provision of goods and/or services pursuant to 9 FAM 41.54 N9." The petitioner did not state that it could only provide one invoice for 2011. Rather, it asked the director, in response to the NOIR and in the subsequent motion, to review the petitioner's exhibits, which included invoices, bank statements, tax returns and other relevant documentation from 2011 and 2012, in analyzing whether the petitioner was doing business. There is no indication that the director considered this evidence. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Further, the director found that the petitioner is "not doing what was petitioned for" due to the petitioner's involvement in real estate transactions. However, the petitioner's initial evidence submitted with the Form I-129 in January 2012 included documentation indicating that the company was engaged in both real estate transactions and software and computer-related business transactions. While the director implied that the revocation was based on a finding that "the statement of facts contained in the petition was not true and correct," pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(4), the record reflects that the petitioner provided sufficient evidence that it had been engaged in two separate lines of business.

In addition, the director erred by advising the petitioner on two occasions that the revocation decision could not be appealed. The regulation at 8 C.F.R. § 214.2(l)(10)(ii) provides that "a petition that has been revoked on notice in whole or in part may be appealed under part 103 of this chapter."

Finally, as noted above and emphasized by the petitioner on appeal, the director did not consider the petitioner's motion to reconsider, but instead reissued the previously entered revocation decision with a new date on June 10, 2013.

Based on the above, the director's decisions will be withdrawn the matter will be remanded to the director for issuance of a new notice of intent for revoke which provides the petitioner with adequate notice of all proposed grounds for revocation of the approved petition. The director shall take into account all evidence in the record, included any additional evidence submitted in response to a new NOIR, in reaching a determination as to the petitioner's eligibility.

At this time, we take no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determination on that issue after issuance of a proper notice of intent to revoke and consideration of the petitioner's evidence. By remanding this matter, the AAO does not necessarily find that the beneficiary is ineligible. Rather, we remand the matter because the director revoked the approval without proper notice of all grounds for ineligibility, failed to consider all relevant evidence submitted in response to the notice of intent to revoke in reaching the revocation decision, failed to properly consider the petitioner's motion, and failed to advise the petitioner of its right to appeal the adverse decision.

Accordingly, the AAO will withdraw the director's decision and remand the petition to the director for further review, issuance of a new notice of intent to revoke and entry of a new decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decisions dated December 17, 2012 and June 10, 2013 are withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse, shall be certified to the Administrative Appeals Office for review.