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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 14 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,

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 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 Texas limited liability company, states that it operates a telecommunications business. The petitioner claims to be a subsidiary of located in South Africa. The petitioner seeks to employ the beneficiary as the vice president of its new office in the United States.

On December 11, 2013, the director denied the petition concluding that the petitioner failed to establish the following: (1) that it has a qualifying relationship with the beneficiary's foreign employer; (2) that the foreign entity is doing business; (3) that the petitioner's new business will support an employee in a managerial or executive position within one year of filing the petition; (4) that the beneficiary has been employed in a managerial or executive position abroad; (5) that the proposed position in the United States would be in a managerial or executive capacity; and (6) that the petitioner has secured sufficient physical premises to house the new office.

The petitioner subsequently filed an appeal on January 10, 2014.[1] Counsel marked the box at part two of the Form I-290B, Notice of Appeal or Motion, to indicate that a brief and/or additional evidence would be submitted to the AAO within 30 days. The record indicates that the petitioner did not file a brief or supplemental evidence within the allowed timeframe. We 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:

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[1] The petitioner also filed a motion to reopen and reconsider on January 6, 2014. On motion, counsel for the petitioner claimed that the director erred in denying the petition because the Service Center claimed it did not receive a response to the director's Request for Evidence, ("RFE"). The petitioner provided evidence that the Service Center received the petitioner's response to the RFE on October 23, 2013, but that the electronic case status system was not updated accordingly. The director granted the motion and affirmed the denial in a decision dated April 12, 2014. The director stated that and the notice of denial clearly indicates that the director had received and considered the evidence submitted in response to the RFE, despite an error in the electronic system indicating that the response had not been received.

> 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 the Form I-290B, counsel for the petitioner states:

> USCIS denied said I-129 . . . and there was confusion on whether USCIS did in fact received [*sic*] the response to said RFE. USCIS initially claimed that it did not receive the response and USCIS' system was not updated when Service Requests. . . were made in this regard – reflecting that NO response was received.
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> . . . Petitioner respectfully requests that USCIS uses its discretion and reconsider its denial and reopen the case . . . and afford the Petitioner the opportunity to re-submit his response to the RFE and properly address any deficiencies there may be. The beneficiary and his family has [*sic*] started a new business that is flourishing here in the US with the potential to create a lot of jobs for local US Citizens. The company's telecommunications technology has been sought after by and it is vital to the success of the petitioner that the beneficiary remain in the US to further Petitioner's momentum of success. In the alternative, the Petitioner will Appeal the Service's Decision based on the record when it mails its brief to the AAO.

As noted, the petitioner did not submit counsel's brief or any additional evidence to this office in support of its appeal. Although the electronic system failed to confirm the service center's receipt of the petitioner's response to the RFE, the director's decision clearly states that "[o]n October 23, 2013 USCIS received your response, which included..." The director's decision reflects consideration of the evidence provided in response to the RFE and includes a thorough discussion of the significant evidentiary deficiencies in the record identifying six separate grounds of ineligibility for the classification sought. The Form I-290B does not address any of the grounds for denial discussed by the director in the decision, and the director did not deny the petition based on the petitioner's failure to respond to the RFE.

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.