



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 23 2015** OFFICE: CALIFORNIA 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, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner, a California corporation, states on the Form I-129 that it is a "Direct Sales Distribution" business. The petitioner states that it is a subsidiary of [REDACTED] located in Malaysia. Accordingly, the United States entity petitioned United States Citizenship and Immigration Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L) so that he may serve as the Business Development Manager for the petitioner.

The director denied the petition on May 19, 2014, concluding that the record does not establish that the beneficiary has been employed in a managerial or an executive capacity for the foreign employer or will be employed in a managerial or executive capacity in the United States.

On June 6, 2014, the petitioner submitted an appeal and brief in support of the appeal. On appeal, the petitioner states that the beneficiary's position abroad was managerial in nature, his position in the United States will be managerial in nature, and that requested documents could not be provided because the beneficiary is not yet employed in the United States. 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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition.

On the Form I-290B, the petitioner submits for the first time percentage of time spent on each duty requested by the director a letter from an authorized representative of the U.S. and foreign entities described the beneficiary's typical managerial duties, and the percentage of time to be spent on each as well as quarterly wage reports for the 3rd and 4th quarter of 2014 for the petitioner.

On May 19, 2014, 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 among other evidence, a detailed description of the beneficiary's duties including percentage of time to be spent on each duty, as well as the quarterly wage reports for the last two quarters of 2014. In response, the petitioner failed to provide the requested evidence. Instead the petitioner submitted a brief explanation of the beneficiary's duties for both the United States and foreign entities. The petitioner did not submit the

percentage of time to be spent on each duty or the quarterly wage reports for the 3rd and 4th quarter of 2014 for the petitioner. The director denied the petition after noting that the petitioner failed to submit the requested evidence.

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.

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.

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. Due to the failure to provide the requested evidence, the petitioner has not met its burden.

Even if we were to consider the petitioner's evidence submitted on appeal, it not sufficient to overcome the director's reasons for denial. The director noted that both descriptions of job duties were vague and did not contain specific information to determine what duties the beneficiary had performed and will perform on a day-to-day basis. On appeal, the petitioner provides a similar description of the beneficiary's duties and notes that the beneficiary spent "100% of his time performing . . . higher level responsibilities" with regard to the foreign position. Similarly, the petitioner states that the beneficiary will "spend 100 percent of his time performing, the above-mentioned higher level tasks." On appeal, the percentages provided do not give any further information regarding the time the beneficiary spends on his duties on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner also claims on appeal that the requested quarterly wage reports for the 3rd and 4th quarter of 2014 for the petitioner could not be provided as the beneficiary "is currently being paid by the parent company in Malaysia." The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8)

and (12). Here, the director requested the quarterly wage reports, the U.S. entity's payroll summary, and Forms W-2, W-3, and 1099-MISC paid to all employees that will be under the beneficiary's direction. The director did not state that the petitioner should only provide the requested documents if the beneficiary was employed in the United States. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, 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. 8 C.F.R. § 103.3(a)(1)(v).

On appeal, the petitioner submits evidence relating to three issues: (1) the beneficiary's position abroad was managerial in nature; (2) the beneficiary's position in the United States will be managerial in nature, and (3) the requested quarterly wage reports cannot be provided because the beneficiary is currently being paid by the parent company in Malaysia. The petitioner fails to identify any erroneous conclusion of law or statement of fact disputing the director's conclusion. Instead, the petitioner presents evidence and does not overcome the director's concerns. The petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal.

The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is now entitled to the status sought under the immigration laws.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.