



U.S. Citizenship
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FILE: WAC 03 263 52436 Office: CALIFORNIA SERVICE CENTER Date: NOV 29 2005


IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. 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 is a corporation organized in the State of Nevada that is engaged in the import, wholesale and retail of patio furniture. The petitioner claims that it is the subsidiary of [REDACTED], located in [REDACTED] Malaysia. The petitioner requests that the beneficiary be granted a three-year period of stay to serve as its director of financial operations.

The director denied the petition on November 13, 2003, concluding that the petitioner did not establish that the petitioner and the beneficiary's foreign employer are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G).

On appeal, counsel stated on Form I-290B that the director's conclusion that there is no evidence of a qualifying relationship "has no basis whatsoever and is totally belied by the overwhelming evidence submitted herein. Petitioner will show and prove this satisfactorily on appeal." Counsel indicated that he would send a brief to the Administrative Appeals Office (AAO) within 30 days. The appeal was received by the California Service Center on November 21, 2003. Counsel submitted a brief to the AAO on September 8, 2004.

In the brief, counsel fails to address the issue of the petitioner's qualifying relationship with the foreign entity. Instead, counsel merely asserts that the denial of the petition has caused the petitioner significant financial hardship. In addition, counsel explains in great detail the specialized knowledge qualifications of the beneficiary and refers to the denial of the beneficiary's request for L-1B status. However, the petitioner clearly represented in the initial petition that the beneficiary was being offered employment in a managerial capacity under section 101(a)(44)(A) of the Act and accordingly requested that she be granted L-1A status. Furthermore, the sole basis for denial of the petition cited by the director was the petitioner's failure to provide evidence that it has a qualifying relationship with the foreign entity. Consequently, counsel's arguments on appeal have no relevance to the actual petition or to the director's decision. The only supporting documentation submitted on appeal is a product brochure containing photographs and prices of the petitioner's products.

Counsel's objections to the denial of the petition on completely different grounds than those actually identified by the director, and without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Contrary to counsel's assertions that the director's finding "has no basis whatsoever," the record shows too many inconsistencies and insufficient documentary evidence to support a finding that there is a qualifying relationship between the U.S. and foreign entities. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant case, counsel fails to acknowledge, much less resolve the inconsistencies discussed in the denial.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.