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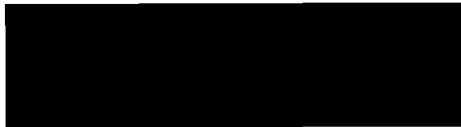
File: SRC 04 119 50296 Office: TEXAS SERVICE CENTER Date: **AUG 032006**

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)

IN BEHALF OF PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its software development managing director 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 limited liability company organized under the laws of the State of Florida and is allegedly engaged in the business of software development. The petitioner claims that it is an affiliate of Lambda ITC of New Delhi, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the petitioner "failed to completely and clearly explain all the responsibilities of the beneficiary" in the initial petition and now seeks to submit further information in support of the petition. The petitioner makes a similar assertion in a letter dated July 27, 2004: "In reviewing your denial of [the petition], it appears that [the petitioner] failed to accurately elucidate the role of [the beneficiary]. We hope that the following information rectifies this error." The petitioner does not identify any erroneous conclusion of law or statement of fact made by the director.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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 concurs with the director's decision and affirms the denial of the petition.

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.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or statement of fact in this proceeding, the appeal must be summarily dismissed. The only error alleged by the petitioner was its own error in not clearly explaining the beneficiary's responsibilities in its petition or in its response to the director's request for evidence dated April 14, 2004. Not only is this insufficient under section

103.3(a)(1)(v), but additional evidence cannot be submitted on appeal where, as here, a petitioner was on notice of a deficiency in the evidence and was 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.