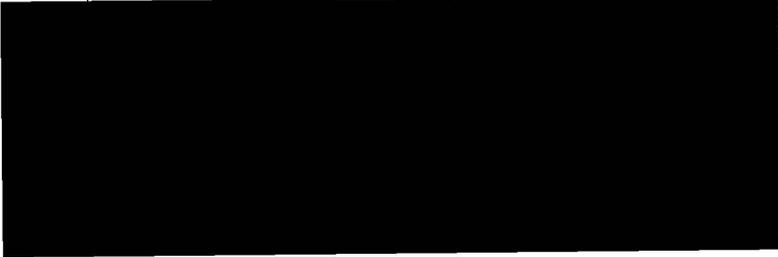




U.S. Department of Justice
Immigration and Naturalization Service

D7

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
SLLB, 3rd Floor
Washington, D.C. 20536



File: WAC 99 217 52281 Office: California Service Center Date:

SEP 14 2000

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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Lawrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a mold and die manufacturing company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that it has sufficient physical premises or that it has been doing business.

On appeal, counsel argues that the petitioner has secured sufficient physical premises at a single location, and that the U.S. entity has been doing business.

It is noted that the issue raised by the director whether the petitioner had secured sufficient physical premises to house the office is not an issue for consideration in a petition for extension of previously approved employment and should have been discussed in connection with the adjudication of the original petition. Therefore, this issue will not be addressed in this proceeding.

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.

8 C.F.R. 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The U.S. petitioner states that it was established in 1998 and that it is a wholly-owned subsidiary of [REDACTED] located in Korea. The petitioner declares six employees and a projected gross annual income of approximately \$1 million. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$60,000.

At issue in this proceeding is whether the U.S. entity has been doing business.

8 C.F.R. 214.2(1)(1)(ii)(G) states:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(1)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The director found that documentation within the record did not establish that the beneficiary had a single place of business from which to do business. It is noted that a lease agreement within the record shows that Ace Manufacturing has leased 9,325 square

feet of space from [REDACTED], from July 1, 1997 to June 31, 2002 at a monthly rate of \$5,000. This lease agreement states that [REDACTED] may not sublet the office space without the Lessor's written consent. The petitioner submitted an agreement showing that it had subleased this same space from Ace Manufacturing on a month to month basis beginning on June 1, 1999. According to the sublease agreement, the U.S. petitioner will pay a monthly rate of only \$200. There is no evidence in the record that [REDACTED] L.P. provided written consent for the subletting of this space.

In a letter dated September 21, 1999, the petitioner was requested to respond to the following:

Submit proof of business conducted at the location listed on the petition. Such evidence should include telephone bills, utility deposits and bills, rent receipts, etc. Provide copies of all city, county and state business licenses. In addition, submit a letter from the owner of the building and/or management company on their corporate stationery, verifying the subsidiary/affiliate company occupancy. This should include information to show authorization for another company to sub-lease to your business.

Copies of the following to show that the petitioner has been actively and systematically conducting its regular course of business in international trading and other business activities, particularly from the time of its inception through January 1999.

Copies of the petitioner's Payroll Summary, W-2 and W-3 evidencing wages paid to employees.

In response, the petitioner claimed that the beneficiary had been primarily engaged in setting up the business and that the U.S. entity "began its full-scale business operation only after it moved to the current location." It is noted that the petitioner moved to its current location only two months before the petition was filed on August 5, 1999, and thus would have been conducting business for, at most, two months. Service regulations are exacting in requiring a new office to demonstrate its progress after the initial one-year period. 8 C.F.R. 214.2(l)(14)(ii).

The petitioner submitted several invoices and purchase orders for the period between August and November of 1999. However, 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Again, the petition

was filed on August 5, 1999, and receipts for business conducted after that date may not be considered.

The petitioner also submitted copies of purchase orders from May, June, and July of 1999; however, the majority of these orders relate to [REDACTED] located in [REDACTED] rather than the U.S. petitioner. The petitioner did not submit evidence that it has been engaged in the continuous provision of goods and services. Accordingly, the petitioner has submitted insufficient evidence to establish that the U.S. entity is doing business. Consequently, the petition may not be approved.

Beyond the decision of the director, the petitioner has submitted insufficient evidence to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity, or that the foreign entity is doing business. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.