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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC 99 124 51826

Office: VERMONT SERVICE CENTER

Date: DEC 17 2001

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:



Public Copy

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

Robert P. Weimann, Director  
Administrative Appeals Office

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

The petitioner is described as a joint venture enterprise that will engage in the import of foodstuffs from the Ukraine. The petitioner seeks to employ the beneficiary in the United States as its chief operating officer. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year or that the petitioner would be able to support a managerial or executive position within one year.

On appeal, counsel for the petitioner asserts that the director's decision was incorrect as a matter of law.

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(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The petitioner is a joint venture enterprise between Commercial Center, Ltd. (CCL), a Ukrainian organization and L.B.L. Food International (L.B.L.), an American partnership. CCL apparently owns ten supermarkets in the Ukraine. L.B.L. is an international distributor of fresh foods. The joint venture agreement between the two companies was entered into November 30, 1998. The joint venture agreement does not name the joint venture enterprise, but a statement submitted with the petition indicates that the joint venture enterprise is called Beechland Foods, International, the

petitioner in this case. The petition was filed in March of 1999.

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

New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to comply with the requirements set forth in 8 C.F.R. 214.2(l)(3)(v), including whether the petitioner will be able to support a managerial or executive position within one year of approval of the petition.

8 C.F.R. 214.2(l)(3)(v) states that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner initially submitted the following documents:

The beneficiary's outline of proposed activity for the petitioner in the first year of operation;

A brief description of the beneficiary's duties for the foreign company;

A brief description of L.B.L.'s business, and its 1996 and 1997 partnership tax returns;

Photos of the interior and exterior of a building;

Numerous documents regarding the foreign entity, including partially translated leases and contracts, an auditor's opinion, a statement of income paid to the beneficiary, and untranslated brochures; and

Information on the beneficiary's education and his position with the foreign company.

The director requested that the petitioner supply additional evidence to show that the parent company had paid for the ownership of the United States entity, including wire transfers to the United States entity and bank statements of the United States entity. The director also requested the articles of incorporation or other governing documents of the United States entity, including a copy of the United States entity's business license. The director further requested evidence that demonstrated the petitioner had obtained sufficient physical premises including a clarification of where the beneficiary would actually be employed. The director requested a comprehensive description of the beneficiary's proposed duties for the petitioner, including a complete position description for all of the petitioner's proposed employees as well as additional evidence regarding the beneficiary's duties for the foreign corporation. The director also requested that the petitioner describe in detail its type of business and to provide evidence that sufficient working capital had been supplied for the petitioner to engage in that type of business. The director requested other documentation clarifying the relationship of the mentioned entities and their affiliated organizations and evidence that the petitioner had begun doing business in the United States. The director finally requested evidence that the foreign entity had the ability to invest in the United States entity.

In reply, counsel submitted a letter to the director indicating that the petitioner did not have a bank account as "it cannot get up and running without the Beneficiary here to run it." Counsel also indicated that there was no need for a business license for the petitioner in the food importing industry. Counsel also submitted additional photographs of office space and a sketch of the floor plan of the work site for the beneficiary's occupation. Counsel indicated the beneficiary would have managerial and executive duties for the position and provided a brief outline of those duties.

Counsel also indicated that agents (two to four individuals in the

first year) hired by the beneficiary would conduct research into the quality and pricing of products and price and negotiate contracts for the import, storage and transportation of food. Counsel further indicated that the joint venture partner, L.B.L. would supply the initial working capital and attached L.B.L.'s bank statements. Counsel also submitted numerous documents regarding the foreign entity's financial status and operation as a viable company.

The director determined that the petitioner had not provided sufficient evidence to demonstrate that the beneficiary's duties would be managerial or executive in nature. The director presumed that the beneficiary would instead be engaged in the non-managerial, day-to-day operations involved with producing a product or providing a service. The director concluded that the record did not establish that the beneficiary would be employed in a managerial capacity or that the petitioner could support such a position within one year of operation.

On appeal, counsel asserts that the evidence in the record demonstrates that the beneficiary had been the manager and executive of a successful Ukrainian retail supermarket chain and that the beneficiary was coming to the United States to act as an executive and manager of a legitimate joint venture project. Counsel asserts that in addition, the petitioner has provided a detailed day-to-day list of the beneficiary's duties and responsibilities during the first year in the United States, initially with the petition and then in response to the director's request for evidence. Counsel finally asserts that the petitioner has a physical office in place, a business plan, a list of managerial duties for the beneficiary and other documents that support the petition. Counsel concludes that for the Service to require more evidence is unfair and smacks of prejudice.

Counsel's assertion that the beneficiary held a managerial or executive position for the foreign entity is persuasive. However, the Associate Commissioner cannot find that the petitioner has complied with all the requirements of 8 C.F.R. 214.2(l)(3)(v) when setting up a new office in the United States.

The petitioner has not provided evidence that supports a conclusion that the United States operation, within one year of the approval of the petition could support an executive or managerial position. Counsel has provided documentation regarding the organizational structure of the foreign entity, but submits confusing statements regarding the ownership of the foreign entity. Counsel indicates, on appeal that the "Beneficiary is owner of 100% of ten supermarkets." However, the translated documentation regarding the ownership of CCL, the foreign entity joint venturer, indicates that the beneficiary owns 60% of the foreign entity. Further, the petitioner has not established that the joint venture has been effectively funded. Again, there are confusing statements supplied by the petitioner and counsel for

the petitioner. The joint venture agreement indicates that the joint venture will be funded equally by the two parties to the joint venture agreement. Counsel, on the other hand, on behalf of the petitioner, indicates that the United States joint venturer will initially fund the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

Beyond the decision of the director, there is no evidence in the record that the petitioner has ever received funds to start the business. There is no evidence of the size of the United States investment or the financial ability of the foreign entity to remunerate the beneficiary or otherwise commence doing business in the United States. It appears the foreign joint venturer has declined to put any funds at risk unless the beneficiary is approved for the L-1 classification. This lack of evidence is a further indication that the petitioner could not support a managerial or executive position within one year of approval of the petition.

Furthermore, the petitioner has not provided sufficient evidence that it has secured physical premises for the new office. The photographs submitted do not identify the premises as belonging to or being utilized by the petitioner. There is no lease agreement provided that would give the petitioner the right to occupy these unidentified premises.

Finally, the petitioner has not provided evidence that it exists as a legal entity. There is no information that the unnamed joint venture that has been established through contract has been recognized under local law. The petitioner has declined to provide information indicating that it has been organized to do business in any of the United States.

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.