

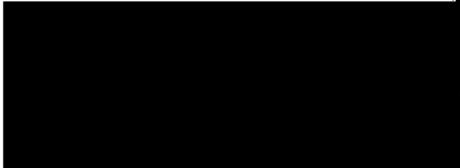


U.S. Department of Justice

Immigration and Naturalization Service

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



PUBLIC COPY

15 NOV 2001

File: EAC 99 181 52410 Office: VERMONT SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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

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 news bureau. The petitioner seeks to employ the beneficiary in the United States as its president and chief executive. The director determined that the petitioner was considered a new office for immigration purposes but that the petitioner had not established that it had secured physical premises for an office in the United States or that the foreign entity had the financial ability to support the United States entity.

On appeal, the petitioner claims it has secured physical premises for an office in the United States and that the foreign entity has the ability to finance a subsidiary in the United States.

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 was incorporated in the state of New York in January of 1999 and the petition was filed in May of 1999. The petition requests an L-1A nonimmigrant visa for the beneficiary in order to set up a new office for the petitioner in New York. The petitioner qualifies under the new office definition in 8 C.F.R. 214.2(1)(1)(ii) that states in pertinent part that:

(F) 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(1)(3)(v).

8 C.F.R. 214.2(1)(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 letters indicating that the United States entity had been created as a subsidiary news bureau of an established Indian news bureau. The petitioner also submitted an assignment letter authorizing the beneficiary to travel to the United States to set up the offices of the petitioner in New York. The petitioner also submitted a letter briefly outlining the plans for the new office.

The director requested that the petitioner supply additional evidence that established a qualifying relationship between the petitioner and the foreign entity. The director also requested the petitioner provide evidence that physical premises had been

secured in the United States. The director further requested evidence that established the size of the foreign entity's investment and ability to commence doing business in the United States. The director finally requested evidence that the beneficiary had been employed abroad, by a qualifying organization, in a managerial capacity for one continuous year of full-time employment within three years prior to the filing of the petition.

In reply, the petitioner submitted a share certificate of the petitioner issued to the foreign entity and a list of share certificates of the foreign entity. In addition, the petitioner submitted a copy of a lease agreement for an apartment located at [REDACTED] Bronx, New York. The petitioner also submitted a Bell Atlantic telephone bill for a newsroom located at [REDACTED] New York. Further, the petitioner submitted a copy of the audited accounts (in rupees) of the foreign organization. Finally, the petitioner submitted a letter from the personnel manager of the foreign entity indicating that the beneficiary had been employed by the foreign entity as president of the company.

The director determined that the petitioner had submitted confusing evidence regarding the United States office location of the petitioner and had failed to provide sufficient information that the foreign entity had the ability to finance the petitioner's operation in the United States.

On appeal, the petitioner submitted a letter stating that it had leased an apartment for an office at [REDACTED] in New York. The petitioner noted that it had also acquired an office at [REDACTED] in New York to be nearer the subscribers of its news bureau. The petitioner also stated in the letter that the foreign entity was not a large company but had invested \$71,035.86 in the petitioner. The petitioner also claimed to have expertise in accumulating, editing, analyzing and presenting the financial news to clients of Reuter, Dow Jones, Bloomberg, Bridge and other equivalent news bureaus in the United States.

The petitioner's statements are not persuasive. The office location of the petitioner is still undetermined. The Service notes that since the filing of the appeal in September of 1999, a third address for the office or offices of the petitioner has been submitted. The record, as it stands, does not contain an adequate clarification of the actual location of the petitioner's offices in the United States and that those office(s) have been secured for the petitioner's operations. The third address submitted only adds to the confusion. 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).

In addition, the petitioner's statement that the foreign entity has invested \$71,035.86 in the petitioner is not supported in the record. The petitioner has not supplied documentation of the claimed investment. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States likewise has not been established. The audited financial statement of the foreign entity, as submitted, is not sufficient to explain how the foreign entity will be able to commence doing business in the United States on the scale briefly described in the appeal.

Further, the record does not clearly set forth the organization of the foreign entity or the planned organization of the petitioner. The structure of the foreign entity's organization has not been provided and it is not clear who is authorized to act on behalf of the foreign entity. A complete business plan setting out concrete details of the nature of the United States office and describing the scope of the office, its organizational structure, and its financial goals also has not been provided. The petitioner's indication on appeal that it hopes to hire a number of individuals and to be fully operational a year after the filing of the petition, is insufficient to satisfy this requirement.

On review, the record does not establish that the petitioner, within one year of the approval of the petition, will support an executive or managerial position.

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.