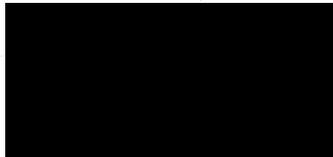


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U.S. Department of Homeland Security
Citizenship and Immigration Services

D7

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



NOV 20 2003

FILE: EAC 00 203 50360 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

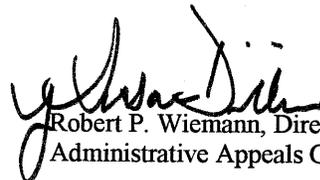
INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as an importer and exporter of home textiles, bedroom and bathroom accessories. It seeks to employ the beneficiary temporarily in the United States as vice-president of its new office. The director determined that the petitioner had not established that it had secured sufficient physical premises to house the new office.

On appeal, the petitioner disagrees with the director's decision, and states that it has submitted sufficient evidence to show that it has secured sufficient physical premises to house the company's new office.

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.

The regulation at 8 C.F.R. § 214.2(1)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

The regulation at 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 regulation at 8 C.F.R. § 214.2(1)(3)(v) states that if the 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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 as an importer and exporter of home textiles, bedroom and bathroom accessories, and

claims to be a subsidiary of Mohammed Ahmed Saeed Bahamil Establishment, located in Pakistan. The petitioner declares zero employees and does not declare any projected or actual gross revenue. The petitioner seeks the beneficiary's services in order to open a new office and render services in a managerial or executive capacity for a period of two years.

At issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that it has secured sufficient physical premises to house a new office.

In response to the director's request for additional evidence to establish that the petitioner had secured sufficient physical premises, petitioner submitted a lease arrangement to lease a townhome from the Valley Stream Village Townhomes. The lease agreement was to be effective from May 1, 2000 through to October 31, 2000. A term in the lease agreement reads:

OCCUPANCY & USE: The residential occupancy of the leased premises is limited to 4 people, (except for occasional overnight guests). No business pursuits or signs are permitted on the leased premises and no pets are permitted without prior written approval by the agent. Assignment of this Lease is prohibited, and sub-leasing of this lease permitted without prior written consent of the Landlord.

The director determined that the evidence submitted was not sufficient to establish that the petitioner had secured sufficient physical premises to house its new office. The director went on to state that the lease submitted by the petitioner was for residential use only, and that the petitioner had failed to submit a written approval.

On appeal, the petitioner states that the beneficiary "has acquired an apartment as office space [H]e has leased two apartments . . . [one to be used for office space and the other as a residential dwelling." The petitioner also contends "[t]he lease for office space specifically states that Mr. [REDACTED] may run a business known as [REDACTED] and no residential clause applies to this." The petitioner also submits a copy of the latest lease agreement and a floor plan for MAS Projects, Inc.

The petitioner's argument is not persuasive. The petition in the instant matter was filed June 14, 2000. The lease agreement submitted on appeal by the petitioner is dated November 1, 2000. The lease agreement was not in existence at the time the initial

petition was filed, or prior to the director's decision. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts, See *Matter of Michelin Tire Corp.*, 17 I&N 248, 249 (Reg. Comm. 1978). Citizen and Immigration Services (CIS) cannot consider facts that come into being only subsequent to the filing of a petition. See *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). Furthermore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Bureau requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). The petitioner has failed to submit sufficient evidence on appeal to overcome the objections of the director. The evidence does not establish that the petitioner has secured sufficient physical premises to house its new office.

Beyond the decision of the director, the petitioner has not established that the petitioner and the foreign entity are qualifying organizations. The record contains little documentary information regarding the extent of ownership and control between the foreign entity's and the petitioner's business operations; thus, raising the issue of whether there is a qualifying relationship between the U.S. entity and the foreign entity pursuant to 8 C.F.R. § 214.2 (1)(1)(ii)(G). In addition, the petitioner has failed to establish the proposed nature of the office, the scope of the entity, its organizational structure, the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary, and the financial ability to commence doing business in the United States. Although not explicitly addressed in the decision, the record contains no documentation to persuade CIS that the beneficiary has been or would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. As the appeal will be dismissed, 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; *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991) (holding burden is on the petitioner to provide documentation); *Ikea US, Inc. v. U.S. Dept. of Justice*, 48 F.Supp.2d 22, 24 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.