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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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APR 20 2004

FILE: SRC 02 220 54428 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

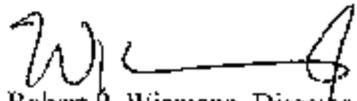
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration
and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is described as a construction and cleaning service. It seeks to employ the beneficiary temporarily in the United States as "director manager" of its new office. The director determined that there was insufficient evidence to establish that the petitioner had sufficient funding and capitalization to commence business in the United States, and 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 presents evidence to substantiate its contentions.

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(l)(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(l)(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(l)(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 2001 as a construction and cleaning service, and claims to be a subsidiary of Taller De Joyeria. The petitioner seeks the beneficiary's services as director and manager for a period of three years in order to open a new office.

At issue in this proceeding is whether the petitioner has complied with 8 C.F.R. § 214.2(1)(3)(v) as a new office petition, sufficient to overcome the objections of the director.

The director determined that additional documentation was needed from the petitioner in order to complete the processing of the petition. The director specifically requested that the petitioner submit evidence of license to conduct business in the United States, evidence of funding or capitalization of the United States company; and evidence demonstrating that sufficient physical premises has been acquired to house the U.S. entity.

In response to the director's request for additional evidence, the petitioner stated that additional funding for the U.S. company will be transferred from the foreign entity once the L-1A petition is approved. The petitioner also stated that the leased premises were temporary and appropriate to accommodate one employee (approximate area of 10 x 10), and that it would opt for a new facility location once the L-1A petition has been approved.

The director determined that the evidence submitted was not sufficient to establish that the petitioner had sufficiently complied with 8 C.F.R. § 214.2(1)(3)(v) concerning new office petitions. The director stated that the evidence demonstrated that the petitioner had not leased commercial space or provided adequate funding or capitalization to support the petitioner's new office in the United States. The director further stated that although the petitioner states that it will obtain funding and capitalization and sufficient physical premises after the L-1A petition is approved, the L-1A petition cannot be approved until it is established that the petitioner is in full compliance with the regulatory requirements for a new office.

On appeal, the petitioner states that once it received the director's denial with the explanations, it understood that it should have submitted evidence in compliance with regulatory requirements before the L-1A petition could be approved. The petitioner submits a bank deposit slip and a commercial lease agreement as evidence on appeal.

After the director requested additional documentation on these issues, the petitioner failed to submit sufficient evidence. On appeal, the petitioner relies on evidence that was requested but not produced until after the initial decision to deny the petition was made by the director. The petitioner submitted a deposit ticket from First Union National Bank, which shows that \$10,000 had been deposited into a checking account on September 27, 2002; 24 days after the director denied the petition. The petitioner also submitted a copy of a business lease agreement, dated September 20, 2002; 17 days after the director denied the petition. 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 Dec. 248, 249 (Reg. Comm. 1978). Citizenship 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). Therefore, 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 CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

The regulation at 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." Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The petitioner's new evidence will not be considered and the record as presently constituted does not demonstrate that the beneficiary has complied with 8 C.F.R. § 214.2(1)(3)(v) concerning new office petitions. There is insufficient evidence submitted to overcome the objections of the director. Although the petitioner contends that it did not fully understand the regulatory requirements until after the director denied the petition, AAO is not required to consider new evidence submitted on appeal in an effort to compensate for the petitioner's frailties. The petitioner has the option of filing a new petition.

In review of the entire record, the petitioner has failed to submit sufficient evidence to establish that it has sufficient funding or capitalization to commence doing business in the United States or to support a managerial or executive position within one year of operation. The petition has also failed to submit evidence to show that it had secured sufficient physical premises to house the new office at the time the petition was filed in this case.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been and would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. In addition, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. 214.2(1)(3)(vii). For these additional reasons, 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 sustained that burden.

ORDER: The appeal is dismissed.