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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: SRC 02 109 54897 Office: TEXAS SERVICE CENTER Date: **APR 27 2004**

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:

[Redacted]

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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.

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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 “intending to engage in the retail business by operating a convenience store.” The petitioner seeks to employ the beneficiary temporarily in the United States as the president of the U.S. company. The director determined that the petitioner failed to establish that the petitioner will support a manager within one year of approval of the L-1 petition.

On appeal, counsel asserts that the petitioner “is not required to commence his business operation at the time of the L-1 Petition.” Counsel explains that the petitioner has secured sufficient business premises.

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)(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 (l)(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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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.

The United States petitioner was incorporated January 25, 2002 and states that it is an affiliate of Step-in-Shoes, located in India. The U.S. petitioner states that both entities are 100 percent owned by the beneficiary. The petitioner seeks to employ the beneficiary for one year at an annual salary of \$18,000.

The first issue in this proceeding is whether the petitioner has established that it has secured sufficient physical premises to house the new office.

On April 2, 2002, the director issued a requested for evidence. The director noted that the petitioner did not submit a lease and thus requested a lease for the new office. On June 20, 2002, counsel for the petitioner responded to the request for evidence and submitted a lease for office space of 200 square feet located at 929 Federal Road, Houston, Texas 77015. On October 9, 2002, the director issued a notice denying the petition. The director determined that the petitioner did not submit evidence that sufficient physical premises had been secured.

On appeal, counsel asserts that the petitioner "is not required to commence his business operation at the time of the L-1 Petition." Counsel explains "[r]ather a Petitioner is required to secure sufficient business premises. In this case, the Petitioner had in fact secured sufficient business premises; therefore, the Petitioner has complied with the statute and regulation to seek the L-1 status for the Beneficiary."

Counsel's argument is not persuasive. Counsel states that the petitioner has secured sufficient business premises. However, the lease for 200 square feet of office space does not commence until June 2002. The petitioner filed the petition in February 2002. Additionally, the petitioner states that it intends to operate a retail convenience store. The petitioner has not provided evidence to establish that 200 square feet of office space is sufficient to run a convenience store. Counsel correctly states that the regulations do not prohibit shared office space. However, the petitioner must demonstrate that it has acquired a physical premise that will be sufficient for the stated business purpose of the new office pursuant to 8 C.F.R. 214.2 (1)(3)(v)(A). The petitioner has not done so. Therefore, the petition may not be approved.

The second issue in this proceeding is whether the petitioner has established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(1)(3)(v)(C). This evidence should demonstrate a realistic expectation

that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In its initial petition, the petitioner stated it “intends to engage in the retail business by operating a convenience store.” The petitioner stated the beneficiary would be responsible for the following duties:

Hiring and firing managers; overseeing development of marketing campaigns; conferring with managers; reviewing market conditions; supervising subordinate employees responsible for production; reviewing and analyzing data relating to market conditions; establishing and implementing policies to manage and achieve marketing and production goals; reviewing and approving budgets prepared by controller and chartered accountants; and directing management of the company.

In providing information regarding the U.S. entity, the petitioner submitted the Articles of Incorporation for the U.S. entity. On April 2, 2002, the director issued a request for evidence. The director requested a business plan that would demonstrate that the U.S. entity would support a manager or executive within one year. The director also requested a detailed list of duties proposed for the beneficiary. The director noted the beneficiary, who is the sole owner of the foreign entity, entered the United States as a B-2 nonimmigrant tourist. The director requested documents that would demonstrate the foreign entity is currently doing business as specified by the regulations. Additionally, the director requested information regarding the financial status of the foreign entity and its ability to capitalize the new U.S. entity.

On June 20, 2002, the counsel for the petitioner responded to the request for evidence. Counsel restated the previously provided description and augmented the description by indicating the percentage of time spent on each duty. Counsel stated the beneficiary’s duties include:

Hiring and firing managers; twenty five percent (25%) of his time supervising subordinate employees and overseeing marketing campaign developed by subordinate managers; twenty five percent (25%) overseeing preparation of marketing reports, and reviewing and analyzing sales data; twenty five percent (25%) establishing and implementing marketing policies to manage and achieve marketing goals; and twenty five percent (25%) managing the company.

The petitioner submitted an “asset purchase agreement” dated May 15, 2002, for a business called “Amigo Mart” located at 829 McCarty, Houston, Texas. As discussed above, the petitioner also submitted a lease for office space of 200 square feet located at 929 Federal Road, Houston, Texas 77015. Additionally, the petitioner submitted an organizational chart for the U.S. entity. This proposed organizational chart consisted of a president, vice president, manager, assistant manager and two cashiers. The petitioner did not submit the requested business plan. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Additionally, the petitioner submitted several documents regarding the foreign company. The petitioner submitted a business registration certificate, an income tax return, bank statements, a list of staff and numerous debit vouchers.

On October 9, 2002, the director issued a notice denying the petition. The director noted the petitioner had not yet purchased the convenience store that would be doing business. The director determined that the petitioner did not submit evidence that sufficient physical premises had been secured. The director stated that the petitioner did not submit evidence of the size of the U.S. investment and the financial ability to remunerate the beneficiary and commence doing business in the U.S. Therefore, the director concluded that the petitioner had not provided sufficient evidence to demonstrate that the intended United States operation will within one year of approval of the petition support an executive or managerial position as defined in the regulations.

On appeal, counsel asserts that the petitioner “is not required to commence his business operation at the time of the L-1 Petition.” Counsel explains “[r]ather a Petitioner is required to secure sufficient business premises. In this case, the Petitioner had in fact secured sufficient business premises; therefore, the Petitioner has complied with the statute and regulation to seek the L-1 status for the Beneficiary.” The petitioner intends to buy a convenience store but it has not provided evidence that it had purchased the business before filing the petition.

Counsel also states “[a] simple review of the L-1 Petition and the supporting documents shows that the Petitioner needs to acquire Amigo Mart and that the proposed organizational chart [sic] documents the staffing level of the Petitioner upon Petitioner’s acquisition of Amigo Mart.” In support of this statement, counsel resubmits a copy of the “Asset Purchase Agreement.” The AAO notes that this agreement includes an amendment that was not previously provided.

Additionally, counsel asserts that the petitioner has the ability to commence doing business and that it and the foreign company affiliate have “more than sufficient funds to pay the [b]eneficiary’s salary in the United States.” The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO notes that the director in her decision questioned the evidence provided by the petitioner showing the foreign entity’s income. The director raised concerns about the foreign entity’s reported income in the request for evidence. The director had calculated that foreign company’s annual income to be the equivalent of \$6,285 USD. On appeal, counsel provides the same documents that were provided with the response to evidence. Counsel provides an audit report for the balance sheet of March 31, 2002 of the foreign company from their accountant as well as a bank statement for the period January 1, 2002 until January 31, 2002. In spite of the director’s stated concerns regarding foreign currency equivalents, the AAO notes that the petitioner did not convert any amount to U.S. dollars. In conclusion, counsel asserts that the petitioner has demonstrated its ability to commence doing business.

Counsel’s arguments are not persuasive. The petitioner has not purchased the convenience store. The “Asset Purchase Agreement” indicates that the petitioner has agreed to purchase the convenience store “within One Hundred and Twenty (120) days of execution hereof, or such other place and date as the parties may agree to in writing.” This agreement does not demonstrate that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The agreement simply states that the petitioner may purchase a convenience store within 120 days and that this time frame could change.

The petitioner has not provided sufficient information regarding the proposed nature of the office describing the scope of its entity. The petitioner provided a vague organizational chart for a company that the petitioner does not own. The petitioner has not provided the requested business plan. The petitioner has not sufficiently described the financial goals of the U.S. entity that would demonstrate to the AAO that the intended U.S.

operation, within one year of the approval of the petition, support an executive or managerial position. Furthermore, neither counsel nor the petitioner explain which numerical figures in the foreign company's financial documents establish that the foreign company affiliate has the financial ability to remunerate the beneficiary and commence doing business in the United States. The petitioner has not provided any evidence of the size of the United States investment. Based on the record of proceeding, the petitioner has not provided sufficient evidence that the intended U.S. operation, within one year of approval of the petition, will support an executive or managerial position. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Therefore, the petition may not be approved.

Beyond the decision of the director, the record indicates that the beneficiary an owner of the petitioning company and the foreign company. 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this case, the petitioner has not furnished evidence that the beneficiary's services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. As the appeal will be dismissed, this issue 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.