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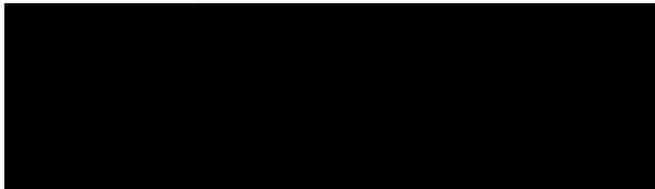


**U.S. Citizenship
and Immigration
Services**

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FEB 20 2004



FILE: WAC 02 202 55230 Office: CALIFORNIA 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:



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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner is described as a spa boutique and body treatment business. It seeks to extend its authorization to employ the beneficiary as its marketing manager for an additional period of three years. The director determined that the petitioner had failed to submit sufficient evidence to establish a qualifying relationship. The director states in his denial that although a qualifying relationship has been established between the foreign entity and the entity in the United States, the business the beneficiary is coming to manage in the United States is a franchise purchased by one of the qualifying organizations either abroad or in the United States. The director denied the petition stating that since the evidence did not establish a qualifying relationship between the franchise where the beneficiary will render services and the beneficiary's foreign employer, the beneficiary is ineligible for classification as an intracompany transferee.

On appeal, counsel asserts that the petitioner entered into a franchise agreement with Danger Figure Spa, Inc. for the sole purpose of having the franchisor assist the petitioner in establishing and setting up the spa in Southern California. Counsel further contends that the franchisor does not own or control the petitioner's spa, but merely provides technical and operational know how.

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)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

E) Evidence of the financial status of the United States operation.

Review of the record establishes that the beneficiary was initially granted L1 status from June 7, 2001 to June 6, 2002. The evidence also establishes that the I-129 petition is for an extension of stay for the beneficiary as the marketing manager for the petitioner, Spa Haven, not for a new employee being transferred from the foreign entity. The record also shows that the petitioner is seeking a continuation of previously approved employment for the beneficiary, without change. The record establishes that the franchise agreement was entered into by the U.S. entity prior to the initial approval for the beneficiary's stay in the United States under a L-1 classification. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970). The record also reflects that the foreign entity purchased 200,000 shares of stock in the U.S. entity, thus making it the sole owner of the organization.

In the instant case, the qualifying relationship that must be examined is that between the foreign entity and the United States entity, which is doing business as "Orient Retreat." The director, in its decision to deny the petition, states that a qualifying relationship has been established between the foreign entity and the entity in the United States. Accordingly, the director's decision will be withdrawn.

However, the petition may not be approved at this time. As it appears that the beneficiary's eligibility for L-1 classification was not properly considered, this case will be remanded for the director to again review the record for a determination as whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee. For example, the director should consider whether the beneficiary has been or will be employed in a primarily managerial or executive capacity. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of July 30, 2002 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.