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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
25 I Street N.W.
Washington, DC 20536

DM

FEB 24 2004

File: SRC 02 235 55828 Office: TEXAS SERVICE CENTER Date:

ON 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:

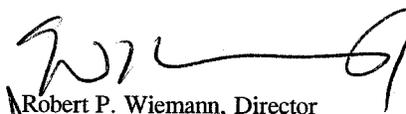
INSTRUCTIONS:

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, Texas Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is new business that plans to acquire retail outlets in the United States. It seeks to employ the beneficiary as its president and chief executive officer. The director determined that the petitioner not had submitted evidence of the beneficiary's employment with Diamond Industries, India. The director also noted that in the business plan submitted earlier, the petitioner had claimed that Diamond Industries, Inc. was formed to engage in real estate investments and convenience store operations. The director found that the petitioner had not provided evidence of this. The director also found that there was no documentary evidence that Diamond Industries is in negotiations with MA & PA Groceries in Griffin, Georgia as claimed. The director noted that no business had been purchased, there was no contract for a business and the amount of the investment was unknown.

On appeal, counsel states that the evidence shows that the beneficiary was an executive and manager of his foreign operation. Counsel further states that he served as managing director and partner (70%) since 1996. Counsel argues that the director erred by stating that the beneficiary was not eligible for L-1A classification because there was no business purchased, there was no contract for a business, and that the amount of the investment was unknown. Counsel further states that the fact that a corporate lease had been signed, a costly business plan had been prepared, and funds had been transferred to the U.S. affiliate all serve to demonstrate that the U.S. company is actively doing business. Counsel argues that the director's denial has effectively prevented the company from purchasing MA & PA Groceries, as well as any other retail stores. Counsel indicates that the company plans on moving forward with the purchase if this appeal is successful.

The United States entity qualifies under the new office definition at 8 C.F.R. § 214.2(1)(1)(ii) that states as follows:

(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.

Regulations at 8 C.F.R. § 214.2(1)(3)(v) state 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 record reflects that the beneficiary was a 70% partner in the claimed parent company, a firm named Diamond Industries, Ichoda. The record also contains evidence that the beneficiary was employed by that firm and that he received a salary from that company during the three-year period prior to the filing date of the visa petition. The record supports the petitioner's assertion that Diamond Industries, Inc. was formed to engage in real estate investments and convenience store operations. Additionally, as the petitioner is a new business, there is no requirement that a United States business be purchased or be under contract prior to the visa petition being filed.

Consequently, the petitioner has overcome the director's objections. However, the petition may not be approved as the petitioner has not established that the beneficiary meets the eligibility requirements for classification as an L-1 intracompany transferee.

Inasmuch as it appears that the beneficiary's eligibility for L-1 classification was not fully considered, this case will be remanded for the director to again review the record for a determination as to 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 petitioner must demonstrate whether there is an existing qualifying relationship between the U.S. and foreign entities and whether the beneficiary has been employed in a primarily managerial or executive capacity by a qualifying entity abroad. The director should also address the question of whether or not

the proposed employment would involve executive or managerial authority over the new operation. Factors to be considered are 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.

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 September 7, 2002 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.