



U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 082 50403 Office: TEXAS SERVICE CENTER Date: JUN 23 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: 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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The U.S. petitioner states that it was established in 2001 and claims to be engaged in the business of importing and exporting home furnishings. The petitioner further claims to be a subsidiary of Pronet 21, located in Hungary. It seeks authorization to employ the beneficiary for an initial period of one year at an annual salary of \$30,000 as the company's president. The director determined that the petitioner had not established the following: 1) that the petitioner had secured sufficient premises to house the U.S. business; 2) that the foreign entity was doing business at the time the petition was filed; and 3) that the beneficiary has been employed abroad and would be employed in the United States in a primarily managerial or executive capacity. On appeal, the petitioner disputes the director's findings and submits a statement in support thereof.

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 regulations at 8 C.F.R. § 214.2(l)(3)(v) state 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 (l)(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 first issue in this proceeding is whether the petitioner has submitted sufficient proof that it has secured premises to house its business operation. With the initial petition, the petitioner submitted an altered lease

dated December 20, 2001. On April 16, 2002 the director issued a request for additional evidence noting the fact that the lease submitted by the petitioner was altered. The petitioner's response included another copy of the petitioner's commercial lease, this time with the correct spelling of the lessor's name. However, as pointed out by the director, the signature page of the latter document was photocopied and did not contain the actual signatures of the lessor and lessee. While the director's observations were accurate, the AAO concludes that the lease initially submitted by the petitioner was sufficient to establish that sufficient physical premises were secured. The document was dated and contained the original signatures of the lessor and lessee. The fact that the lessor's name was spelled incorrectly does not invalidate the document, particularly since the lessor's name and address was stamped on the signature page directly next to the lessor's signature. As such, the director's objection regarding the issue of sufficient physical premises has been overcome.

The second issue in this proceeding is whether the petitioner has established that the foreign entity continued to engage in the regular, systematic, and continuous provision of goods and/or services throughout the year 2001. See 8 C.F.R. § 214.2(I)(1)(ii)(H). With the initial petition, the petitioner submitted the foreign entity's profit and loss statement for the year 2000, the company's bank account statements, and two subcontractor contracts, one dated May 30, 2001 and another one dated June 30, 2001. The two subcontractor contracts indicate that the petitioner hired outside companies to perform advertising services. As properly indicated in the request for additional evidence, the information submitted does not establish that the foreign entity did business throughout the year 2001. The director also informed the petitioner that there are various other documents that could be submitted to establish that the foreign entity was doing business during the time period in question. The director even listed a number of the optional documents that the petitioner could have submitted.

The petitioner responded by stating that the foreign entity's tax return for the year 2001 was not yet available and instead submitted that company's tax return for the year 2000. It is noted that 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). Contrary to the petitioner's apparent assumption, the director did not state that it was mandatory for the petitioner to submit the foreign entity's 2001 tax return if such document was unavailable. However, the director named a variety of different documents that the petitioner could have submitted to satisfy the director's request. The petitioner chose not to submit any of the mentioned documents. As such, the petitioner has failed to establish that the foreign entity was doing business during the relevant time period. For this initial reason the petition cannot be approved.

The remaining issue in this proceeding is whether the petitioner has established that the beneficiary has been and would be employed primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;

- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the petition, the petitioner stated that the beneficiary was employed abroad as a department manager of foreign trade. According to the beneficiary's resume, his duties included planning and developing the import and distribution of products, and "[l]ocating and negotiating with manufacturers and structuring international financing." The petitioner stated that in his proposed employment in the United States the beneficiary will "concentrate on locating and negotiating sales contracts for home furnishings, porcelains, therapeutic products and softwares [sic] for export to Hungary." The petitioner also stated that the beneficiary "will be responsible for analyzing price structures for profitability, quality control, arranging bank financing and letters of credit and gaining exclusive contracts for distribution in Hungary."

In the director's request for additional evidence, dated April 16, 2002, the petitioner was instructed to specify the beneficiary's duties abroad in terms of the functions and/or personnel he was overseeing. The petitioner was asked to indicate whether the personnel the beneficiary managed were professional or managerial employees. The petitioner was also asked to describe the beneficiary's duties at the end of the petitioner's first year of operation and to specify how such duties fall under the category of managerial or executive.

In regard to the beneficiary's duties abroad the petitioner provided the names, position titles, and brief job descriptions of the three individuals that were under the beneficiary's supervision. The petitioner repeated the

previously given description of duties, but did not provide a more detailed description. The petitioner also failed to specify whether the beneficiary's subordinates were managerial or professional employees. In regard to the beneficiary's proposed duties in the United States, the petitioner provided the following additional description:

Planning objectives and developing the American subsidiary into a successful operation.
Locating distributors and manufacturers of product lines that are demanded in Hungary.
Negotiating sales/price contracts with American companies for the purchase of bed mattresses, furniture, porcelain, therapeutic products to develop be mattresses along with softwares [sic] for export to Hungary. Responsible for hiring, training and overseeing personnel and for accounting and financing.

In the denial the director determined that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. Although the petitioner addressed several of the director's other objections, as discussed above, the petitioner did not provide any further information regarding the beneficiary's duties.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The previously submitted descriptions of the beneficiary's job abroad and his proposed job in the United States fail to convey an understanding of what the beneficiary has been and would be actually doing on a daily basis. Furthermore, while it appears that the beneficiary was primarily a personnel manager, there is no indication whether the employees the beneficiary supervised abroad were managerial or professional. Although the petitioner submitted a business plan of the projected hires after its first year of operation, there is no indication whether the beneficiary would be acting as a personnel or a function manager, as the petitioner failed to specify which employees or which function the beneficiary would manage. The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. Nor has the petitioner demonstrated that it will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies would constitute significant components of the duties performed on a day-to-day basis. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not shown that the petitioner and the foreign entity have a qualifying relationship, as the petitioner has not submitted evidence that the foreign entity purchased its ownership of the petitioner's stock. As previously discussed by the director, the only capital deposited into the petitioner's account was in the amount of \$300 in cash. Even this sum cannot be traced to the foreign entity. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this immigrant visa classification. *Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986)(in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982)(in nonimmigrant visa proceedings). In the instant case, the petitioner has not submitted sufficient evidence to establish that the foreign entity paid for its ownership of the petitioner's stock as claimed. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It is noted that

an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). As such, due to the additional grounds discussed in this paragraph, this petition cannot be approved.

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.