U.S. Department of Homeland Security

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 02 137 50897 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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

The petitioner was incorporated in the State of Alabama in 2001 and is engaged in the business of making and distributing cast iron products.[1] The director determined that the petitioner had not established that it had secured sufficient physical premises to house its operation or that it was adequately funded.

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 the instant proceeding is whether the petitioner has secured sufficient business premises to house its operation. On August 14, 2002 CIS addressed this issue by requesting that the petitioner submit additional evidence providing the address of its business premises, as well as a description of the type of space the petitioner will occupy.

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[1] On appeal the petitioner submitted a Certificate of Incorporation indicating that it had also incorporated in the State of Texas on February 6, 2002.

In response, the petitioner stated that when the beneficiary initially entered the United States as a B-1 business visitor the business operation was set up in the beneficiary's apartment. The petitioner also stated that among the beneficiary's first orders of business was finding warehouse space to house the operation. As proof that the desired warehouse space was ultimately obtained, the petitioner submitted a letter, dated April 19, 2002, describing the warehouse and the terms of renting that space. The letter contained the beneficiary's signature to indicate his acceptance of the terms and conditions for renting the warehouse space.

Nevertheless, the director denied the petition, concluding that the petitioner failed to secure sufficient business premises to house its operation. The director noted that the warehouse location is for storing goods and cannot be used to conduct business.

On appeal, counsel clarified that its operation consists solely of wholesale, rather than retail, transactions and as such a public location was not necessary to conduct business. Counsel further stated that the warehouse space contains office space that is used to conduct business. In support of counsel's statements, the petitioner provided a copy of a commercial lease whose date of commencement was April 17, 2002. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In the instant case, the lease submitted on appeal was signed in September 2002, five months after the petition was filed. Even if the AAO were to assume that the lease term commenced on April 17, 2002, as indicated in the body of the lease, the petition was filed on April 1, 2002. Therefore, even though the AAO concludes that the warehouse space leased by the petitioner can be considered "sufficient business premises," the fact remains that the premises were not leased in time for the filing of the petition. For this reason the petition cannot be approved.

The other issue in the instant proceeding is whether the petitioner was sufficiently funded. In an attempt to clarify this issue, CIS's request for additional evidence instructed the petitioner to submit evidence of financial resources committed by the foreign entity to fund the U.S. operation. The petitioner's response consisted of a number of wire transfers originating with the foreign entity and going to the beneficiary's personal bank account. Only two of the wire transfers, that totaled $3,000, were actually completed by the time the petition was filed. The remaining transfers, totaling approximately $9,500, were all completed after the petition was filed. As noted previously, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Id.* The $3,000 transferred to the beneficiary by the time the petition was filed cannot be deemed sufficient funding, particularly when the fee for renting warehouse space is in excess of $4,200 per month and the beneficiary's monthly salary is another $1,500 making the petitioner's minimum monthly expenses total nearly $6,000. The record lacks sufficient evidence to show that the petitioner was sufficiently funded. For this additional reason the petition cannot be approved.

Beyond the decision of the director, the fact that the foreign entity transferred funds to the beneficiary's bank account rather than directly to the petitioner gives rise to questions regarding the issue of a qualifying relationship. The petitioner indicated in its State of Alabama Articles of Incorporation that it has the authority to issue 100 shares of its stock. In the Minutes of the Organizational Meeting of the Board of Directors, the Board resolved that the foreign entity would purchase all of the petitioner's issued shares for a total of $10,000. However, there is no stock certificate to indicate that the foreign entity is the owner of the petitioner's issued shares, nor is there evidence that the foreign entity paid for ownership interest of the petitioning entity. 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). Case law confirms 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 visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the instant case, the petitioner has not submitted sufficient evidence to establish that the foreign entity has ownership and control of the U.S. petitioner. For this additional reason, this petition may not 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.