

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

U.S. Department of Homeland Security

20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D17

MAY 18 2004

FILE: SRC 02 270 50740 Office: TEXAS SERVICE CENTER Date:

IN 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: 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

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 case will be remanded for further action.

The petitioner is engaged in the business of freight forwarding. It seeks to employ the beneficiary temporarily in the United States as its marketing manager. The director determined that the petitioner had not established that the foreign entity had been doing business over the course of the last year. On appeal, the petitioner submits a statement and additional documentation disputing the director's findings.

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) state 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.

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.

At issue in this proceeding is whether the petitioner has established that it is doing business.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

On October 23, 2002, CIS issued a request for additional evidence instructing the petitioner to submit documentation to establish that the foreign entity has been doing business over the past year. The director ultimately concluded that the petitioner failed to submit sufficient evidence to establish that the foreign entity had been doing business during the relevant time period. Specifically, the director noted that the most recent shipping invoice containing the foreign company's name is dated February 11, 2002, seven months before the petition was filed. Contrary to the director's conclusion, a thorough review of the documentation submitted by the petitioner in response to the request for additional evidence reveals numerous shipping documents naming the foreign entity as one of the parties in the shipping process. A sufficient portion of these documents are dated June, July, and August of 2002, thereby suggesting that the foreign entity was, in fact, doing business directly prior to the date of the filing of the instant petition. A further examination of the record of proceedings shows the foreign entity's shipping documents date back as far as March of 2001 suggesting that the foreign company had been doing business well before the time the petition was filed. The documentation submitted indicates that the petitioner has overcome the director's sole basis for denying the petition.

However, the record lacks sufficient evidence to establish that the beneficiary has been employed abroad and would be employed in the United States in a managerial or executive capacity. In response to CIS's request for additional evidence, the petitioner submitted a description of the beneficiary's duties abroad and the proposed list of duties in the United States. After reviewing this evidence the AAO concludes that the beneficiary has not been employed abroad and will not be employed in the United States in a managerial or executive capacity. Accordingly, this case will be remanded so that the director can fully address these issues. The director may request any additional evidence deemed necessary. She shall then examine the record in its entirety and make a new decision based upon her findings.

ORDER: The decision of the director, dated December 4, 2002, is hereby withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.