



U.S. Citizenship
and Immigration
Services

02



FILE: SRC 02 236 52952 Office: TEXAS SERVICE CENTER Date: **OCT 25 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

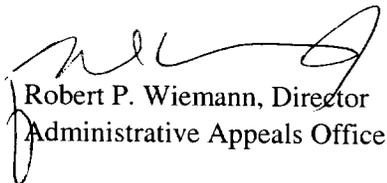
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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

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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 petitioner is a new U.S. office engaging in the export and import business. The petitioner was incorporated in the State of Florida in July 2002. It seeks to employ the beneficiary as an executive representative. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee.

The director denied the petition, concluding that the requirements for an L-1 visa in connection with a new office were not met at the time the petition was filed on August 1, 2002. Specifically, the director found that the petitioner failed to establish that a qualifying relationship existed between the foreign and United States entities at the time the petition was filed. The director also noted that, in response to the director's request for further evidence, the petitioner stated that office space for the new office still had not been secured, and the foreign company still had not wired funds to the United States entity.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B, Notice of Appeal, counsel for the petitioner simply stated as the reason for the appeal that, "[t]he company does have a lease, and will submit evidence that they were in fact a company at the time the petition was submitted." Counsel also indicated on the Form I-290B that a brief and/or evidence would be sent to the AAO within 30 days. No brief has been filed to date. On June 16, 2003, counsel submitted a packet of materials comprising (1) a copy of a commercial lease agreement for premises in West Palm Beach, Florida listing "Erfan Enterprises" as the tenant, (2) an updated Form G-28, (3) a letter dated April 25, 2003 to the Texas Service Center, transmitting a bank statement of Erfan Enterprises, Inc., at Union Planters Bank in Florida, and (4) copies of prior correspondences pertaining to the director's October 24, 2002 request for additional evidence (all of which were already in the record). As of this date, the AAO has received nothing further from counsel or the petitioner, and the record will be considered complete.

Based on the totality of counsel's submissions on appeal, the AAO must conclude that the petitioner has not identified specifically an erroneous conclusion of law or statement of fact as a basis for the appeal. Moreover, the AAO concurs with the director's determination that all requirements for a new office were not met when the petition was filed, and therefore, the petition cannot be approved.

To establish 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 establish, among other things, that a qualifying relationship exists between the foreign entity and the United States entity. See 8 C.F.R. § 214.2(i)(3)(i). In this proceeding, the director correctly concluded that the petitioner has failed to meet that requirement. In a letter dated July 20, 2002, which was submitted with the petition, the beneficiary stated that he is a 50% partner of the foreign entity, Erfan Enterprises, Inc., in Dhaka, Bangladesh. The record contains another letter dated December 18, 2002 noting that "the percentage of share of Erfan Enterprises. Dhaka [sic] is 49% and Erfan Enterprises Inc. USA will hold 51% share" in the foreign entity. However, there is no further evidence in the record to support either of these statements regarding the ownership and control of the foreign 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).

Similarly, the petitioner failed to establish sufficiently the ownership and control of the United States entity. The petitioner initially submitted a copy of the unanimous written consent in lieu of the first meeting of its board of directors, dated July 17, 2002, which indicated that the beneficiary and another individual have offered to subscribe for and purchase 49% and 51%, respectively, of the outstanding common shares of company. The petitioner did not submit copies of stock certificates, the company's stock ledger, or any other evidence of the issuance of such shares. On October 24, 2002, the director requested that further documentary evidence, which may be in the form of stock certificates, be provided to establish the ownership and control of the United States entity. In response, the petitioner did not provide any further documentation of the ownership and control of Erfan & Farrish, Inc., the petitioning U.S. employer named in the Form I-129. Instead, the response letter, signed by the beneficiary as president and his wife as vice president of Erfan Enterprises, Inc., stated that they have incorporated an entity by that name in Florida, and is submitting documentation in connection with that entity in response to the director's request. The AAO notes that while the record does contain the articles of incorporation and stock certificates of Erfan Enterprise, Inc., the Florida corporation, that entity is not the petitioner of record. In fact, the record indicates that that entity was not incorporated until December 2002, and therefore was not in existence at the time the petition was filed.

In light of the foregoing, the AAO agrees with the director's conclusion that there is insufficient evidence to demonstrate that a qualifying relationship exists between the foreign entity and the United States entity at the time the petition was filed, in accordance with the relevant regulations. *See* 8 C.F.R. § 214.2(l)(3)(i). 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 addition, as the director noted, the record indicates that physical premises for the new office had not been secured at the time the petition was filed, as required under the regulation at 8 C.F.R. § 214.2(l)(3)(v)(A). In the letter dated January 19, 2003 responding to the director's request for additional evidence, the beneficiary indicated that he was still searching for suitable premises and did not submit a lease agreement as the director requested. The lease agreement submitted on appeal has an effective date of December 1, 2002, four months after the petition was filed. The petitioner also failed to provide evidence of the funding or capitalization of the United States entity, as the director had requested. Moreover, as noted earlier, both the lease agreement and the bank record submitted on appeal pertain to an entity other than the petitioner of record. Thus, the petitioner also failed in these respects to establish eligibility for the benefit requested at the time of filing the petition. *See Matter of Michelin Tire Corp.*, *supra*.

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. The petitioner has not met this burden. Furthermore, inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.