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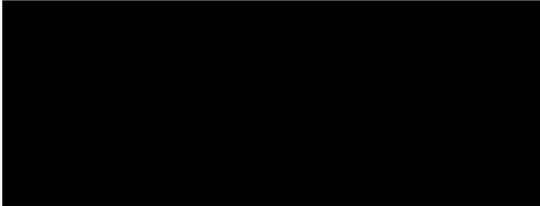
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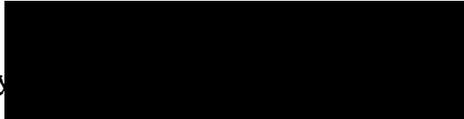
U.S. Citizenship
and Immigration
Services

DF



FILE: SRC 03 165 52609 Office: TEXAS SERVICE CENTER Date: **JUL 05 2005**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 summarily dismissed.

The petitioner states that it is engaged in the export and import business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition, concluding that the petitioner has not demonstrated that the beneficiary would be employed in a primarily managerial or executive capacity in the United States.

On the Form I-290B appeal, the petitioner simply asserts:

[The beneficiary] is engaged not only in managing & directing the two locations, but also have successfully searched the market and arranged machinery & finance for our new proposed bottling plant, which ultimately lead us to start export business. PLEASE REFER THE ATTACHED DETAIL and reconsider your decision as your approval will enable [the beneficiary] to execute the project which in the final states. We are much confident that the progress on this project will fulfil your all requirements in six to eight months. [sic]

The petitioner indicates in a letter accompanying the Form I-290B that at the time it responded to the director's request for further evidence, the petitioner was unable to provide the details for its proposed water treatment and bottling plant project, which is almost in its final stages. The petitioner also indicates that the beneficiary recently completed the market research, feasibility study, and financial arrangements for the project. The petitioner submits with the Form I-290B documents relating to the market research, feasibility study, cost projections and real estate survey for the project.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The AAO notes that on January 29, 2004, the director requested further evidence from the petitioner, including a statement of the exact nature of the petitioner's business and what type of items it imports and exports, and documentary evidence in support of the petitioner's answer. In response to that part of the director's request, the petitioner states:

[The U.S. entity] is basically engaged in wholesaling imported items. Our recent focus has been on [the] import of terry towels, wash[cloths], kitchen towels, bandanas, marble handicrafts and frames (wooden and metallic) from Pakistan.

We also own [a] convenience store and dollar stores. These operate under the dba of [REDACTED] and [REDACTED] [sic]. These provide a channel to sell directly to end users.

The petitioner made no mention in that response, or for that matter, anywhere else in the record, of its water treatment and bottling plant project, or the beneficiary's role in such a project. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to the requirements of the Citizenship and Immigration Services (CIS). *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Moreover, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Thus, even assuming that the above described project was already in progress, with the beneficiary's involvement, at the time the petition was filed, the petitioner should have submitted the documents relating to the project in response to the director's request for evidence if it had wanted the evidence to be considered. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Finally, the AAO notes that the regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or statement of fact in this proceeding, the appeal must be summarily dismissed.

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.

ORDER: The appeal is summarily dismissed.