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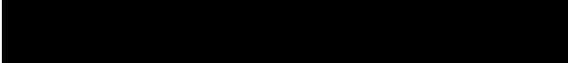
**U.S. Citizenship
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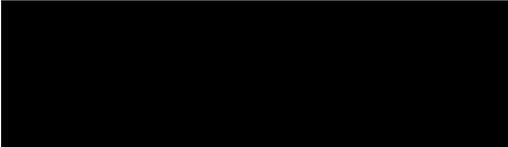


File: LIN-04-034-50398 Office: NEBRASKA SERVICE CENTER Date: JUL 07 2005

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)

IN 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

DISCUSSION: The Director, Nebraska 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 filed this nonimmigrant petition seeking to employ its Sales Consultant as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Colorado, and it states that it acts as a broker for selling ice and refrigeration plants. The petitioner claims that the beneficiary previously worked with a partner in Senegal. The beneficiary was initially admitted to the United States in B-1 status as a visitor for business, and the petitioner now seeks to change his status to L-1A and extend his stay.

The director denied the petition concluding that the petitioner did not establish that: (1) the petitioner has a qualifying relationship with a foreign entity; and (2) the beneficiary worked abroad in a managerial or executive capacity for one year out of the three years preceding the filing of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel claims that the beneficiary is eligible for L-1A status. Counsel provides a letter, additional evidence, and previously submitted documents.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, 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 regulation at 8 C.F.R. § 214.2(l)(3) states 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.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issues in the present case are whether the petitioner has a qualifying relationship with a foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i), and whether the beneficiary worked abroad in a primarily managerial or executive capacity for one year out of the three years preceding the filing of the petition as required by 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

In the initial petition, on Form I-129 the petitioner failed to name an employer for which the beneficiary worked abroad. In the spaces in the form where the petitioner was requested to provide the name and address of the foreign employer, as well as the dates when the beneficiary worked for the entity, the petitioner stated "N/A," which is understood to mean "not applicable." The petitioner failed to complete the sections of Form I-129 that require the petitioner to indicate the relationship between it and the beneficiary's foreign employer, and to describe the stock ownership and managerial control of each company. On Form I-129 the petitioner checked the box that indicates that it and the beneficiary's foreign employer no longer have the same qualifying relationship as they did when the beneficiary was employed abroad. As evidence to support the petition, the petitioner included a short letter and a copy of the beneficiary's passport. The letter does not name a foreign entity, and it simply states that the beneficiary has been working in West Africa to sell ice plants.

On January 16, 2004, the director issued a request for evidence. The director instructed the petitioner as follows:

Submit documentary evidence to establish the qualifying corporate relationship between the United States business entity and the foreign business entity, which employs the beneficiary. Such evidence must establish common ownership and control between the foreign entity **and** the United States entity. Evidence of a qualifying relationship may include, but is not limited to, annual reports, statements from the organization's president or corporate secretary, articles of incorporation, financial statements, and/or evidence of ownership of all outstanding stock for both entities.

(Emphasis in original). The director further stated that "[t]he documentation submitted to show that the beneficiary qualifies, as an L-1A Executive/Manager, is not sufficient." The director listed the criteria required to establish executive capacity and managerial capacity as found in sections 101(a)(44)(A) and (B) of the Act. The director added the following:

[S]ubmit evidence to establish that the beneficiary qualifies under all four criteria stated above for either a Manager or Executive. Submit a statement signed by an authorized official of the prospective employer describing the alien's employment for one continuous year abroad within the three years immediately preceding the filing of the petition, or if the alien is already in the U.S., immediately preceding his/her entry as a nonimmigrant, **and** describing the intended employment in the U.S. The statement should include information concerning

the dates of employment, job titles, specific job duties, types of employees supervised, if any, level of authority, and title and level of authority of the alien's immediate supervisor.

(Emphasis in original). The director further instructed the petitioner to "submit an organizational chart showing the alien's current and proposed positions in relation to others in the company." The director finally stated that "[i]f you submit a document in any language other than English, it must be completely translated. The **translator must certify** that he/she **is competent** to perform the translation and that the translation is **accurate**. The foreign-language document(s) must be submitted with the English translations." (Emphasis in original).

In a response dated January 29, 2004, the petitioner provided the following: (1) a brief letter discussing the petitioner's business operations and indicated that the beneficiary owns 50 percent of the petitioner; (2) minutes from one of the petitioner's meetings that states that the beneficiary is a 50 percent owner of the petitioner; (3) copies of two stock certificates that reflect that the beneficiary and one other individual each own 200 shares of the petitioner; (4) copies of emails that reflect that the beneficiary is acting as a broker for companies in Africa to purchase equipment from companies in the United States; (5) a letter from PNC Bank that reflects that the beneficiary is serving as a consultant for the bank in his individual capacity; (6) a copy of a letter titled "Indication Letter for a Buyer's Credit" that notes that the letter was forwarded to the beneficiary in his capacity as "Director, First American Trade & Investment"; and (7) copies of two emails, dated February 15, 2001 and May 9, 2002, that relate to the petitioner's business operations.¹

Despite the director's request, the petitioner failed to submit any evidence that reflects the ownership or control of the foreign entity. In fact, the petitioner did not name the foreign entity, provide an explanation of its business operations, or submit evidence that it exists as a bona fide company. The petitioner did not provide organizational charts for the foreign entity or petitioner. Nor did the petitioner provide a letter that clearly discusses the beneficiary's duties abroad and explains how they meet the requirements of either section 101(a)(44)(A) or (B) of the Act. The petitioner did not provide the beneficiary's "dates of employment, job titles, specific job duties, types of employees supervised, if any, level of authority, and title and level of authority of the [beneficiary's] immediate supervisor."

On May 6, 2004, the director denied the petition. The director found that the petitioner did not establish that: (1) the petitioner has a qualifying relationship with a foreign entity; and (2) the beneficiary worked abroad in a managerial or executive capacity for one year out of the three years preceding the filing of the petition. Specifically, the director stated the following:

In the additional evidence submitted it was shown that stock ownership and control of the [petitioner] was equally divided (50%) between the beneficiary and [REDACTED]. Since ownership and control was equally divided common ownership and control of the [petitioner] was not established. Also requested was evidence to establish a qualifying

¹ It is noted that all documents submitted to evidence the petitioner's ownership reflect a different name, [REDACTED]. While the petitioner claims that it reorganized as a limited liability company, it has failed to provide evidence to support this assertion.

relationship between the [petitioner] and the foreign entity. None was submitted. A review of all of the evidence submitted failed to include any documentation that a foreign business entity even existed.

Without a qualifying foreign business entity the petitioner was unable to submit evidence that the beneficiary was employed for one continuous year abroad within the three years immediately preceding the filing of this petition or criteria which would establish that the beneficiary qualified as either a manger or executive.

On appeal, counsel claims that the beneficiary is eligible for L-1A status. Counsel provides a letter, additional evidence, and previously submitted documents. In counsel's letter, he names the foreign entity as an office of the petitioner; [REDACTED] which is the first time the foreign entity has been identified in these proceedings. Counsel submits untranslated documents which he claims are tax returns and lease/rental statements for the foreign entity. In a letter from the petitioner's president, he briefly discusses the beneficiary's business activities abroad. Neither counsel nor the petitioner explain the beneficiary's foreign or U.S. duties in detail, or address whether the beneficiary's positions meet the requirements of either section 101(a)(44)(A) or (B) of the Act. In a second letter from the petitioner's president, he states that the beneficiary "eventually gained ownership of 50% of [the foreign entity] because of his outstanding ability to generate sales and qualified buyers."

On review, the AAO agrees with the decision of the director. The record does not establish that the petitioner has a qualifying relationship with a foreign entity, or that the beneficiary worked abroad in a managerial or executive capacity for one year out of the three years preceding the filing of the petition. The 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). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). As detailed above, the petitioner failed to provide requested evidence regarding the ownership and control of the foreign entity or the beneficiary's duties abroad. The absence of such evidence precludes the material lines of inquiry of whether the petitioner possesses a qualifying relationship with the foreign entity, and whether the beneficiary was employed abroad in a managerial or executive capacity for one year out of the three years preceding the filing of the petition. Thus, the petitioner's failure to submit the requested evidence is grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this reason, the appeal will be dismissed.

Additionally, as in the present matter, 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). Counsel and the petitioner now identify the foreign entity and offer evidence of its ownership and business operations. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

It is further noted that the petitioner submits numerous untranslated documents on appeal. In the request for evidence, the director explicitly instructed the petitioner to include certified translations of any documents not in English. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). This represents an additional reason why the evidence will not be accorded any weight in this proceeding.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence and explanation to show that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The petitioner failed to adequately respond to the director's request for evidence regarding the beneficiary's "job titles, specific job duties, types of employees supervised, if any, level of authority, and title and level of authority of the alien's immediate supervisor" with respect to the prospective U.S. employment. The petitioner further declined to provide an organizational chart for its operations. These omissions preclude the material line of inquiry of whether the beneficiary will be employed in the United States in a primarily managerial or executive capacity. 8 C.F.R. § 103.2(b)(14). For this reason, the petition may not be approved.

Also beyond the decision of the director, the petitioner failed to establish that it is doing business in the United States, such that it constitutes a qualifying organization. *See* 8 C.F.R. § 214.2(l)(ii)(G)(2). The evidence of record only contains two documents that pertain specifically to the petitioner's business operations, including copies of two emails, dated February 15, 2001 and May 9, 2002. These two emails are not sufficient to establish that the petitioner is engaged in "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(ii)(H). It is noted that the majority of evidence relating to the beneficiary's consulting services reflects that he is functioning in his individual capacity, or as the director of First American Trade & Investment. The record also contains evidence that the beneficiary serves as Vice President, Business Development for a separate organization, ISMPP International, located in Washington, DC. Business activity conducted by the beneficiary in his individual capacity or on behalf of separate organizations is not attributable to the petitioner and does not serve as evidence that the petitioner is doing business as contemplated by 8 C.F.R. § 214.2(l)(ii)(G)(2). For this additional reason, the petition may not be approved.

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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.