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U.S. Citizenship  
and Immigration  
Services

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FILE: SRC 03 008 51018 Office: TEXAS SERVICE CENTER Date: JUN 10 2005

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

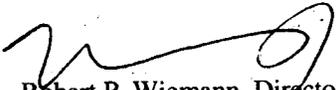
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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

According to the documentary evidence contained in the record, the petitioner was incorporated May 8, 2002, and claims to be in the restaurant business. The petitioner claims that the U.S. entity is a subsidiary of Realnext, KFT, located in Budapest, Hungary. The petitioner declares two employees and an estimated \$302,000 in gross annual income. It seeks to employ the beneficiary temporarily in the United States as the president of its new office for one year, at a weekly salary of \$750.00.

The director determined that the evidence was not sufficient to establish that: (1) the petitioner had secured sufficient physical premises to house the new office; and (2) the beneficiary had been employed abroad in a managerial or executive capacity for one continuous year within three years preceding the filing of the petition.

On appeal, the petitioner disagrees with the director's determination and asserts that it has secured sufficient physical premises to house the new office.

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 regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 regulation at 8 C.F.R. § 214.2(1)(3)(v) states 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 this proceeding is whether the petitioner has submitted sufficient evidence to establish that it has secured sufficient physical premises to house the new office.

In a letter of support, dated October 4, 2002, the petitioner stated that the U.S. entity was established in May of 2002 and is wholly owned and managed by the beneficiary.

The director determined that the petitioner had not submitted sufficient documentary evidence to allow her to reach a final decision with respect to the U.S. entity's business premises. The director thereafter specifically requested that the petitioner submit "evidence of the lease/purchase of facilities in which to conduct business in the United States."

The petitioner failed to submit any documentation attesting to the existence of a lease agreement in response to the director's request for additional evidence.

The director subsequently denied the petition, noting that the petitioner had failed to submit evidence of the U.S. entity's lease.

On appeal, the petitioner states that the physical premises were secured by purchasing 50 percent of the stocks of the Blimpie Restaurant franchise unit. The petitioner further asserts that it has also acquired the management and control over the restaurant. The petitioner submits copies of a Bill of Sale and Assignment, dated May 13, 2003; an Independent Management Agreement, dated May 20, 2003; a Bedierco, Inc. stock certificate made out to Realnext, Inc., dated May 20, 2003; a Stock Transfer notice, dated May 20, 2003; and photographs of the interior of a Blimpie restaurant, dated May 21, 2003.

After the director requested additional documentation on this issue the petitioner failed to submit evidence in a timely manner. The petitioner submits evidence that was not submitted to the director when requested and which was not in existence at the time the petition was filed. It is noted that the petition in the instant case was filed October 9, 2002. 8 C.F.R. § 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The regulations require the petitioner to submit evidence that establishes that sufficient physical premises to house the new office have been secured at the time the new office petition is filed. See 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner has not submitted any documentary evidence to show that the U.S. entity had entered into a commercial lease agreement for the lease of space to house its new office. In the absence of such evidence the petition may not be approved.

Although not explicitly addressed in the decision, the record contains no documentation to persuade the AAO that the beneficiary will be employed by the U.S. entity primarily in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. The description given by the petitioner of the beneficiary's proposed duties is vague and generally paraphrased the statutory definition of executive capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner described the beneficiary duties as directing the entire operation of the organization and establishing goals. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). For this additional reason, the petition may not be approved.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary's stay in the United States is temporary. Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982). The petitioner claims that the beneficiary is a majority owner of the U.S. and foreign entities. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to

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an assignment abroad upon completion of his services in the United States. For this additional reason, the 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.