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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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JUN 17 2005

[Redacted]

FILE: SRC 01 208 53613 Office: TEXAS SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:

[Redacted]

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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to § 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 Florida that is operating as a clothing distributor. The petitioner claims that it is a subsidiary of the beneficiary's foreign employer, located in Peru. The petitioner seeks to employ the beneficiary as a manager for one year.

The director determined that the petitioner did not submit evidence that it had secured sufficient physical premises to house the new office and denied the petition. The director also determined that the petitioner has not demonstrated that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position.

On appeal, counsel submits a brief and an additional lease for storage space. Counsel asserts that the petitioner has secured sufficient physical premises for the new office and that the U.S. company, within one year of the approval of the petition, will be able to support an executive or managerial position.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, 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)(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.

The regulation at 8 C.F.R. § 214.2(l)(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 secured sufficient physical premises to house the new office.

In its initial petition, the petitioner submitted a lease for 163 square feet located at [REDACTED] Miami Fl. The lease stated that the premises shall be used and occupied for the purpose of a manufacturer's agent – clothing and for no other purpose without the Lessor's consent. On August 7, 2001, the director issued a request for evidence and noted that based on the lease the petitioner was not doing business as defined by the regulations.

In response to the request for evidence, the petitioner submitted an additional lease for storage space at a public storage facility located at [REDACTED] Florida. This lease for the storage area stated that the tenant agrees that the aggregate value for the personal property stored will not exceed \$5,000. Additionally, the lease stated that the "[t]enant acknowledges that the Premises may be used for storage only, and that use of the Premises for the conduct of business or for human or animal habitation is specifically prohibited." The director determined that the petitioner did not submit evidence that it has secured sufficient physical premises to house the new office because it provided a lease for a storage space, which prohibited the conduct of business, and denied the petition.

On appeal, counsel asserts that the director failed to recognize that the petitioner submitted two different leases. Counsel states that the first lease submitted is for the petitioner's business office located at [REDACTED]. Counsel states that the second lease is for space in a storage facility located [REDACTED] Florida. Counsel explains that it is clear that the second location listed is used for storage only and that the first lease provided is where that petitioner's business is conducted. Counsel further explains that given the nature and age of the company's business, it is not necessary to house large amounts of inventory. Upon review of the record, the AAO has determined that the petitioner has secured sufficient physical premises to house the new office. The AAO will withdraw this part of the director's decision.

The second issue in this proceeding is whether the petitioner has demonstrated that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position.

In support of this petition, the petitioner submitted the following: a letter from the vice-president of the U.S. company; registration documents, bank statements, tax returns and financial statements for the foreign company; registration documents and a copy of the Articles of Incorporation for the U.S. company; and a business plan for the U.S. company.

On August 7, 2001, the director requested evidence of the relationship between the U.S. company and the foreign company as well as photographs of the U.S. company and the foreign company. In response, counsel for the petitioner submitted stock certificates that indicated that the foreign company, [REDACTED] owns 51% of the petitioner and [REDACTED] 49% of the petitioner. Additionally, counsel provided purchase receipts that counsel asserted establishes that the petitioner is doing business. Counsel also submitted the following photographs: a photograph of a sign "[REDACTED] By Catalog"; photographs of office space which petitioner asserted is the U.S. office space; photographs of a business called [REDACTED] company which the petitioner stated is the foreign company. Counsel submitted business cards of the president and the vice-president of [REDACTED]

The director determined that the petitioner had not demonstrated that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position as defined 8 C.F.R. § 214.2 (l) (1) (ii) (B) or (C).

On appeal, counsel asserts that the evidence submitted clearly establishes that the new office will support an executive or managerial position within one year of the approval of the petition. Counsel insists, "evidence has been submitted to confirm the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States. This is reflected in the bank account of the U.S. Company as well as the financial strength of the overseas parent, [REDACTED] in Peru." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is noted that elsewhere in the petition and in the record of this proceeding that the foreign parent company is called Tortas Caseras.

The petitioner submitted a statement of "corporation or association resolution of authority" which states that the petitioner chose a U.S. bank as a depository of funds. The petitioner has not provided a copy of a bank statement or submitted evidence documenting the amount of funds available. Simply 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). Counsel refers to the "financial strength" of the foreign company. The petitioner submitted three monthly bank statements of the foreign company that have not been translated. 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). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner submitted a letter with the initial petition describing the foreign company's business. The petitioner stated, "given this financial backing and almost ten years of operations, the directors and shareholders of [REDACTED] have now decided to diversify their company and commence operations in the U.S. market." The petitioner's letter states that the foreign company had sales of \$94,000.00 in the year 2000. The petitioner submitted income statements of the foreign company for the years 1997 through 2000. Based on the evidence provided it is not clear where the petitioner provided evidence of \$94,000 in sales. Though the English translation of the 2000 income statement contains a figure of 94,685.04 for net sales, this figure does not appear on the original document in Spanish. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review of the record, the petitioner has not submitted evidence showing the size of the United States investment, or the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). Based on the evidence submitted, the petitioner has not demonstrated that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs 8 C.F.R. § 214.2(l)(1)(ii)(B) or (C). For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner's description of the stock distribution of the companies does not meet exactly the definitions constituting a qualifying relationship between the United States and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). Counsel for the petitioner submitted stock certificates that state that the foreign company, Tortas Caseras, owns 51% of the petitioner and [REDACTED] owns 49% of the petitioner. However, the petitioner's letter stated "[the beneficiary] is President of both companies and owns 95% of the shares of the company in Peru and 49% of the shares of the company in Miami, Florida." Counsel's brief and the Form I-129 indicated that the beneficiary owns 49% of the U.S. company. The business plan of the U.S. company listed two partners, the beneficiary and [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-92.

Beyond the decision of the director, the petitioner stated that the beneficiary owns 95% of the original foreign corporation which raises the question of whether the parent organization will still be doing business so that a qualifying relationship exists pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). In addition, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. § 214.2(l)(3)(vii). For these additional reasons, this 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.