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**U.S. Citizenship
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FILE: LIN 04 018 50865 Office: NEBRASKA SERVICE CENTER Date: NOV 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)

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 Director, Nebraska 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 hotel business. It seeks to employ the beneficiary temporarily in the United States as its vice 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 based on the following conclusions: 1) the petitioner did not establish that the beneficiary spent one continuous year abroad in a managerial or executive capacity; (2) the petitioner did not establish a qualifying relationship between corporate entities; (3) the petitioner did not establish that it had met the regulatory requirements for a new office pursuant to 8 C.F.R. 214.2(l)(3)(v); and, (4) the petitioner did not establish that the proposed position with the United States entity is managerial or executive in nature. The director also determined that the beneficiary was not entitled to the requested change of status, as his request for an extension of his B-1 status had been denied.

On the Form I-290B appeal, the petitioner asserts:¹

1. It is the decision of the service based on the appearance rather than the facts that [the beneficiary] spent less than one continuous year in a managerial capacity abroad.
2. Since it was incorporated one month prior to the filing of the petition, it was a “new office”
3. The Service is once again thinking and judging based on what appears rather than the facts that it is a branch and not a subsidiary.
4. There are enough documents to substantiate that the petitioner has a “sufficient physical premises.”
5. The B1 status was pending.

In light of the above, with this appeal, the above referenced file should be approved.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner has not established that sufficient premises to house the new office have been secured. See 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner has not established that 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 or that the proposed employment involves executive or managerial authority over the new operation.

¹ The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented “by an attorney in the United States, as defined in section 1.1(f) of this chapter, by an attorney outside the United States as defined in 292.1(a)(6) of this chapter, or by an accredited representative as defined in 292.1(a)(4) of this chapter.” In this case, the person listed on the G-28 is not an authorized representative.

See 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner provided one-sentence job descriptions for the beneficiary's former and current employment. Furthermore, as noted by the director, CIS records indicate that the beneficiary had not been in India for one continuous year during the three years preceding the filing of the instant petition, as he had in fact been in the United States as a visitor almost continuously since June 2001. Finally, the petitioner provided no evidence that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C). Such evidence must include: (1) evidence regarding the proposed nature of the office, describing the scope of the entity, its organizational structure and its financial goals; (2) evidence of 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) evidence describing the organizational structure of the foreign entity.

The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Contrary to the petitioner's assertions, the facts of the case do not speak for themselves, particularly in light of the director's detailed list of reasons for denying the petition. Furthermore, on January 28, 2004, prior to denying the petition, the director issued a detailed Notice of Intent to Deny the petition describing with specificity the many deficiencies in the petition and supporting evidence, and providing the petitioner with 30 days to provide additional evidence to overcome the director's objections. This notice was sent by certified mail and returned to the Service Center as unclaimed. 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). It is noted that the director's decision, dated April 1, 2004, was mailed to the same address and was delivered. On appeal, the petitioner does not attempt to resolve the many deficiencies discussed in the denial, other than stating that the director based the decision on "appearance" and that the initial evidence submitted was sufficient to establish eligibility.

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.

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. Inasmuch the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, it has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.