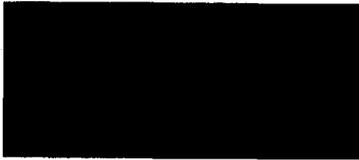




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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D7

File: SRC 04 176 51345 Office: TEXAS SERVICE CENTER Date: NOV 28 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

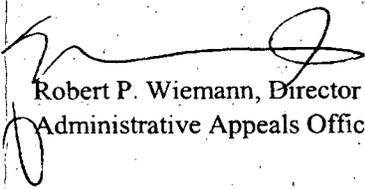
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 Texas that claims to be engaged in the import and sale of charcoal. The petitioner claims that it is a branch office of [REDACTED] located in Asuncion, Paraguay. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a one-year period of stay to serve as its executive director.

The director denied the petition concluding that the petitioner did not establish: (1) that the United States company has secured sufficient physical premises to house the new office; or (2) that a financial investment was established for the new office.

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, the petitioner indicates that it has rented a new warehouse space with an attached office "in order to fulfill the requirements for the visa." In support of the appeal, counsel submits a copy of the new lease agreement and photographs of the premises. The petitioner does not object to the denial of the petition, nor does its representative specify any erroneous conclusions of law or statements of fact on the part of the director. In addition, the petitioner does not address the director's finding that there was no evidence of a financial investment for establishment of a new office in the United States.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. While the AAO acknowledges receipt of an adequate lease agreement on appeal, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). At the time of filing the petition on June 10, 2004, the petitioner submitted a residential lease agreement for an apartment rented to the beneficiary. On June 28, 2004, the director requested a copy of the business lease for the petitioner and an explanation as to where the company intended to store and sell charcoal. In response, the petitioner indicated that it would rent a warehouse with an adjacent office in the future and confirmed that it would be operating out of the apartment rented to the beneficiary. The petitioner also indicated that it rented "part of a warehouse" that would be used until a larger space was required. The petitioner submitted copies of two invoices for rent, purportedly issued to the petitioner by the owner of the warehouse, but failed to provide a lease agreement describing the type or amount of space. 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)).

Based upon this documentation, the AAO concurs with the director's finding that the petitioner did not submit sufficient evidence that it had acquired sufficient physical premises to operate the new office as required by 8 C.F.R. § 214.2(l)(v)(A).

As noted above, the petitioner does not address the director's determination that there is insufficient evidence of a financial investment in the United States company, as required by 8 C.F.R. § 214.2(l)(v)(C)(2). Accordingly, the director's decision will be affirmed. The AAO notes that the petitioner submitted evidence that it had a checking account with a balance of \$1,027.00, and did not appear to be adequately funded to commence operations in the United States.

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 a statement of fact in this proceeding, the appeal will be summarily dismissed.

Beyond the decision of the director, the petitioner's description of the stock distribution of the companies does not meet the definitions constituting a qualifying relationship between the United States entity and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The record indicates that two individuals, [REDACTED] and [REDACTED] own the foreign entity in equal shares. The ownership of the United States entity is divided among three individuals as follows: [REDACTED] 225 shares; [REDACTED] 225 shares; and [REDACTED] 50 shares. Therefore, the petitioner has not established that the two companies are owned and controlled by the same individual or by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(ii)(L). Based on the evidence submitted, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations. 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 summarily dismissed.