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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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File: SRC 06 014 50672 Office: TEXAS SERVICE CENTER Date: **AUG 1 2006**

IN RE: Petitioner:   
Beneficiary:

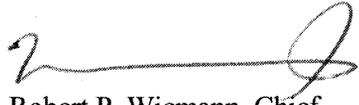
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**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, Chief  
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 summarily dismissed.

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 Florida that claims to be engaged in the manufacture and sale of wood shutters. The petitioner states that it is a subsidiary of Lanco Industries Limited, located in Jamaica. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a one-year period in L-1A classification to serve as its marketing manager and chief executive officer.

The director denied the petition on December 14, 2005, concluding that the petitioner did not establish that the United States company has secured sufficient physical premises to house 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, counsel for the petitioner indicates that the petitioner entered into a lease agreement for warehouse space on December 23, 2005. In support of the appeal, counsel submits a copy of the executed lease agreement, evidence of a security deposit and rent paid by the petitioner, an occupational license for the newly-leased premises, and photographs of the leased warehouse space. Neither counsel nor the petitioner objects to the denial of the petition, nor do they specify any erroneous conclusions of law or statements of fact on the part of the director.

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). The evidence submitted on appeal is not probative of the petitioner's eligibility as of the date of filing and therefore will not be given any weight in this proceeding.

At the time of filing the petition on October 19, 2005, the petitioner submitted a copy of an "HQ Global Workplaces Virtual Office Program Service Agreement." Under the terms of the agreement, the petitioner was granted the nonexclusive right to two hours of use of private office space, full-time receptionist service, mail receiving and forwarding services, and a dedicated inbound dial telephone number. The service agreement was valid from November 1, 2004 through October 31, 2005. The petitioner's business plan referenced the company's intention to secure 3000 square feet of warehouse space for the receipt and handling of products exported from its foreign affiliate.

On October 31, 2005, the director requested that the petitioner submit "documentary evidence that the petitioner has conducted sufficient physical premises to conduct the stated business," specifically, a current, valid, signed lease agreement. In response, the petitioner submitted evidence that it had signed a "virtual office" agreement with HQ Global, valid from August 8, 2005 through August 31, 2006. Pursuant to the terms of the agreement, the petitioner would receive telephone answering services, fax and mail handling, use of the address, and 16 hours of office usage per month. Counsel for the petitioner noted that the petitioner would commence the "distribution and retail aspects of the business" after six months, and would obtain 3,000 square feet of warehouse space at that time.

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 of the date of filing, as required by 8 C.F.R. § 214.2(l)(v)(A). Although the petitioner has been given a suite number in an office building, there is no indication that an office had been assigned for the petitioner's regular and exclusive use. Accordingly, the petitioner has not established that it has secured adequately physical premises to house an import and distribution company. The "virtual office" agreement does not satisfy the petitioner's burden to show that it has obtained sufficient physical premises from which to operate its intended business and appears to only grant the petitioner the right to use an office for several hours per week. The petitioner has not submitted evidence on appeal to overcome the director's decision.

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 record as presently constituted does not contain sufficient evidence of a qualifying relationship between the United States and foreign entities, as required by 8 C.F.R. § 214.2(l)(3)(i). The petitioner stated on Form I-129 that the U.S. entity is a wholly owned subsidiary of the foreign entity, Lanco Industries, Ltd. In a July 1, 2005 letter submitted in support of the petition, the petitioner stated that the two companies are affiliates, and noted that the beneficiary owns a 60 percent interest in each company. The petitioner submitted the foreign entity's December 17, 1991 memorandum of association, which identifies the beneficiary as one of three shareholders, and indicates that he owns 100 shares of the company, or 50 percent of the shares issued as of that date. No other evidence of the foreign entity's current ownership was submitted. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

With respect to the ownership of the U.S. company, the petitioner submitted: its articles of incorporation, indicating that the company is authorized to issue 1,000 shares of common stock; and its stock certificate number one, which was blank. The petitioner has not submitted any documentary evidence to establish the ownership and control of the U.S. entity. 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 on the inconsistent and incomplete evidence, the petitioner has not established that the U.S. and foreign companies are affiliates, as there is insufficient evidence that they are owned and controlled by the same parent or 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). Nor has the petitioner established the foreign entity and the U.S. entity have the claimed parent-subsidiary relationship. For this additional reason, the petition may not be approved.

Another issue not addressed by the director is whether the petitioner established that the beneficiary would be employed in a primarily managerial or executive capacity within one year of approval of the petitioner, as required by 8 C.F.R. 214.2(l)(3)(v)(C). The petitioner has provided only a vague and nonspecific description of the beneficiary's proposed duties that fails to identify what tasks he will perform on a day-to-day basis. For example, the petitioner stated that the beneficiary's duties will include "development and implementation of goals, objective policies and procedures," developing and implementing "organizational and program plans," and performing "a wide range of difficult to complex administrative activities related to finances and accounting, marketing, staffing and personnel operations" and "discretionary activities." Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, several of the beneficiary's duties do not clearly fall under traditional managerial or executive duties as defined in the statute. See sections 101(a)(44)(A) and (B) of the Act; 8 U.S.C. §§ 1101(a)(44)(A) and (B). For instance the beneficiary is described as making contact with service providers and contractors; preparing reports, correspondence, memos, records and forms; evaluating activities of competitive firms; interacting with customers; preparing presentations in support of the marketing functions; and monitoring and evaluating accounting systems. These duties suggest that the beneficiary will devote some portion of his time to routine administrative, operational, market research, marketing, customer service and finance functions. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary will primarily perform non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Finally, the petitioner's proposed staffing structure is not persuasive in establishing that the company will develop to a point where it can support the beneficiary in a primarily managerial or executive position within one year. The petitioner indicates that it will hire a marketing/sales manager, a warehouse worker/installation supervisor, a shutter installer and a "trade helper" during the first year of operation. Notwithstanding the employees' job titles, the record does not establish that any of the beneficiary's subordinates will be employed in a managerial or supervisory position, or that any of them will serve in a professional capacity. See § 101(a)(44)(A)(ii) of the Act. Nor does it appear that the petitioner would have sufficient employees to relieve the beneficiary from performing the company's day-to-day administrative, purchasing, import-related and financial functions. It is reasonable to conclude, and has not been shown otherwise, that the beneficiary will continue to perform these non-qualifying tasks until the petitioner is capable of hiring additional staff. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not

considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). For this additional reason, the petition can 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.