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U.S. Citizenship
and Immigration
Services

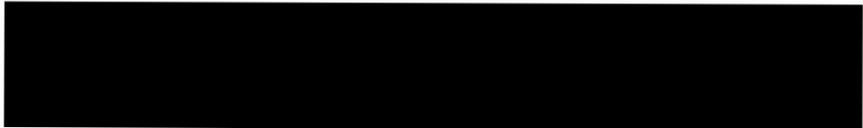
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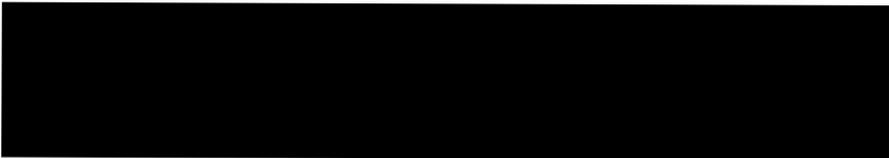
File: SRC 05 177 50962 Office: TEXAS SERVICE CENTER Date: DEC 21 2006

IN RE: Petitioner:
Beneficiary:



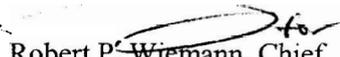
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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 visa petition seeking to employ the beneficiary as its president to open a new office in the United States 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 limited liability company organized under the laws of the State of Florida.

The director denied the petition concluding that the petitioner did not establish that (1) sufficient physical premises have been secured to house the new office; (2) the beneficiary had been employed abroad in a primarily managerial or executive position; (3) the intended United States operation, within one year of the approval of the petition, will support a managerial or executive position; or (4) the petitioner and the foreign employer have a qualifying relationship.

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. In support of the appeal, counsel to the petitioner provided a statement on the Form I-290B.¹

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.

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.

Counsel to the petitioner asserted the following on the Form I-290B:

[Citizenship and Immigration Services] does not consider Realtor and/or Brokerage services as professional. However, common practice and several sources indicate that Realtors and Brokers are considered professionals. In fact, their activity is regulated by the Division of

¹On November 21, 2006, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had ever been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. On November 22, 2006, counsel replied to the AAO by fax and indicated that he did not file a brief or evidence.

Business and Professional Regulations under Florida Statutes. Professionals in the business of property brokerage require specialized knowledge to perform in a managerial or executive capacity within an organization.

Despite counsel's unsupported assertion that Florida realtors and brokers, generally, are professionals having specialized knowledge, counsel does not identify any erroneous conclusions of law or statements of fact made by the director in denying the petition. Counsel does not assert that the employees supervised by the beneficiary in the Czech Republic are professionals or, equally important, that the director erred in determining that the petitioner failed to establish that these Czech employees are professionals. Counsel also failed to identify any erroneous conclusions of law or statements of fact made by the director in denying the petition on the other three grounds articulated in her decision. Consequently, the appeal must be summarily dismissed.²

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 met this burden.

ORDER: The appeal is summarily dismissed.

²While the director did indicate in her decision that "it would not appear as though the beneficiary would be functioning" as an executive or manager in the United States because his subordinate employees in Florida would be non-professional real estate agents, this observation by the director was not a basis for denying the petition. As indicated above, the director denied the petition because the petitioner failed to establish that (1) sufficient physical premises have been secured to house the new office; (2) the beneficiary had been employed abroad in a primarily managerial or executive position; (3) the intended United States operation, within one year of the approval of the petition, will support a managerial or executive position; or (4) the petitioner and the foreign employer have a qualifying relationship. The director concluded that the petitioner did not establish that the intended United States operation will support a managerial or executive position within one year of petition approval because the petitioner failed to establish that an investment was made by the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2) and *not* because the beneficiary would be managing non-professional real estate agents. Therefore, as the director's observation regarding whether Florida real estate agents could be classified as professionals for purposes of this visa classification was immaterial *dictum* and thus not relevant to the denial of the petition, counsel has not identified any erroneous conclusions of law or statements of fact for the appeal. Therefore, the appeal must be summarily dismissed.