



U.S. Citizenship
and Immigration
Services

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FILE: SRC 06 101 50564 Office: TEXAS SERVICE CENTER Date: APR 05 2007

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 extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation, operates as a property management company specializing in holiday rental properties. The petitioner claims that it is an affiliate of Foresight Refrigeration Ltd., located in the United Kingdom. The beneficiary was initially granted one year in L-1A classification in order to open a new office in the United States, and the petitioner now seeks to extend her status for three additional years.

The director denied the petition on June 14, 2006, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Specifically, the director noted that at the time the petition was filed, the U.S. company appears to have employed only two pool and lawn laborers in addition to the beneficiary. The director noted that if these employees are responsible for maintaining the pools and lawns, "all remaining duties associated with operating the U.S. company would fall under the purview of the beneficiary. Thus, the beneficiary would be responsible for managerial duties as well as a host of non-managerial duties." The director found that the U.S. company had not grown to the point where it could support a managerial or executive position and therefore the petitioner is ineligible, by regulation, for an extension of the beneficiary's L-1A status.

The petitioner filed the instant appeal on July 11, 2006. In an appellate brief dated August 1, 2006, counsel for the petitioner acknowledges that the petition was denied based partially on the number of employees working for the U.S. company. Counsel asserts that the number of employees has increased, and submits copies of Forms W-4, Employee's Withholding and Allowance Certificate, for three employees who were apparently hired in July 2006, subsequent to the denial of the petition. Counsel emphasizes that the beneficiary, in addition to serving as president of the petitioning company, will also serve as the president and director of Florida Rental Options, Inc., an affiliate company which was incorporated on May 25, 2006, more than three months subsequent to the filing of the instant petition. The petitioner submits a resume and professional credentials for a prospective employee of the newly established company.

Counsel asserts that "the extent of business operations has expanded significantly," and that "the beneficiary's executive duties have become even clearer with the expansion of the employee base and by the addition of new executive duties by being the President of the newly established Florida Rental Options, Inc."

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), 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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. On appeal, counsel for the petitioner does not dispute the director's findings or suggest that the decision was based on an erroneous conclusion of fact or law. Rather, counsel indicates that presently, the petitioner would have three additional employees, whose job titles and duties have not been identified. Although not stated explicitly, counsel appears to suggest that with the addition of three employees, the beneficiary would be relieved from participating in the day-to-day operations of the company. Counsel also emphasizes that the beneficiary will hold a concurrent "executive" position as president of a newly-established company that appears to be an affiliate of the petitioner. However, the evidence submitted on appeal need not and will not be considered. 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).

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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

ORDER: The appeal is summarily dismissed.