

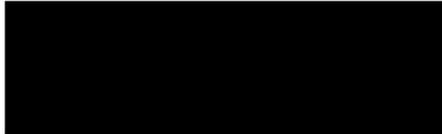
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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D-7

File: SRC 05 161 50948 Office: TEXAS SERVICE CENTER Date: **APR 05 2007**

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:



**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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its president 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 under the laws of the State of Florida and allegedly manages a hotel. The beneficiary was initially granted a one-year period of stay (December 15, 2003 to December 14, 2004) to open a "new office" in the United States. The petitioner in that matter was KMPB Group (USA), Inc., a California corporation. The director denied the subsequently filed extension petition (SRC 05 051 51675). The petitioner, a newly formed Florida corporation with the identical name and parent as the original "new office" petitioner, now seeks approval of a second "new office" petition to permit the beneficiary to reenter the United States in L-1A status for one additional year.<sup>1</sup>

The director treated the second "new office" petition as a petition to extend the validity of the original "new office" petition pursuant to 8 C.F.R. § 214.2(l)(14)(ii). The director concluded that the petitioner had not established that it had been doing business for one year prior to the filing of the instant petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).<sup>2</sup>

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 to the petitioner asserts that the petitioner should be treated as a "new office" and that the record establishes its eligibility under the "new office" criteria. In support of this assertion, the petitioner submits a brief and additional evidence. Counsel does not specifically address the director's determination that the petitioner failed to establish that it has been doing business for the past year apparently relying on the assertion that the instant petition is for a "new office," or for "new employment," and that the criteria applicable to "new office" extensions, including 8 C.F.R. § 214.2(l)(14)(ii)(B), do not apply in this case.

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

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<sup>1</sup>It is noted for the record that, according to the corporate records of the State of Florida, the current petitioner changed its name to "Imperial Management Group, Inc." on December 7, 2006.

<sup>2</sup>It is noted that, in her decision, the director commented on the veracity of the articles of incorporation and the stock certificates. The director also commented on the petitioner's staffing and its use of the trade name "Imperial Swan Hotel." However, as these comments were not relevant to the director's sole basis for denying the petition, i.e., the petitioner's failure to establish that it has been doing business for the past year, the AAO will not address these comments except as these relate to the petitioner's need to establish that it has a qualifying relationship with the foreign entity. *See infra*.

specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the petitioner may be granted a second "new office" L-1A visa approval with an additional one-year validity period.

The petitioner has requested that the instant petition be treated as a "new office" petition. As indicated above, the beneficiary was initially granted a one-year period of stay to open a "new office" in the United States, and the director denied a petition pursuant to 8 C.F.R. § 214.2(l)(14)(ii) to extend this period of stay. The petitioner now asserts that, because it is a "new" corporation formed under the laws of the State of Florida, the petitioner is thus a "new office" and is entitled to approval of a second "new office" petition for a second one-year period of stay for the beneficiary.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive. The petitioner may not be granted a second "new office" L-1A visa approval with an additional one-year validity period.

In general, the statute allows nonimmigrant L-1A classification for an alien that is being transferred from an overseas employer temporarily to the United States to work for a related company in a managerial or executive capacity. Section 101(a)(15)(L) of the Act. By statute, eligibility for the classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Pursuant to the strict statutory definitions, section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive," such as staff officers or specialists, self-employed persons who perform the management activities involved in practicing a profession or trade, or a first-line supervisor of non-professional employees. See section 101(a)(44)(A)(iv) of the Act; see also 52 Fed. Reg. 5738, 5740 (February 26, 1987).

Recognizing that a manager or executive may not immediately engage in the full scope of his or her duties, the regulations provide for a lower standard when a petitioner is a "new office." According to 8 C.F.R. § 214.2(l)(1)(ii)(F), a "new office" is defined as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." The term "doing business" is defined as "the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

The regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the beneficiary is coming to the United States as a manager or executive to open or to be employed in a "new office," the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) 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 and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) 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) The organizational structure of the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that, after one year, a visa petition which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

Counsel asserts that the petitioner should be granted a second one-year period to open the new office. In support of the request for a second "new office" period, the petitioner asserts the following in a letter dated May 18, 2005, which was appended to the instant petition filed on May 19, 2005:

[The petitioner] is the second U.S. operation established by [the foreign entity]. The first U.S. operation, which was also under the name of [the petitioner], was incorporated in the State of California in October 2003 (tax ID number of [REDACTED]). At the end of 2004, [the foreign entity] made the business decision to relocate and establish a new company in the State of Florida. The new company started its operation in January 2005. On February 23, 2005, [the petitioner] entered into a Management Agreement with KFSL Investments, Inc. to provide complete property management and operation services for the 168-room Imperial Swan Hotel & Suites located at [REDACTED]. Today, [the petitioner] has about 60 employees on its payroll.

As indicated above, the beneficiary was initially granted a one-year period of stay (December 15, 2003 to December 14, 2004) to open a "new office" in the United States as an employee of the foreign entity's "first" United States operation, i.e., a California corporation. The director denied the subsequently filed extension petition for this "new office." The instant petitioner, a newly formed Florida corporation with the identical name and claimed parent as the original "new office" petitioner, now seeks approval of a "second new office" petition to permit the beneficiary to reenter the United States as an employee of the Florida corporation.

Despite counsel assertions, the petitioner may not be granted a second "new office" L-1A visa approval even though the petitioner is a new legal entity separate and distinct from the original "new office" petitioner. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up new businesses. The regulations allow for a one-year period for a business organization to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under a more lenient standard, Citizenship and Immigration Services (CIS) would in effect allow foreign entities to create under-funded, under-staffed, or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 petitions without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(i)(14)(ii). As previously noted, the original petitioner's extension petition was denied.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United

States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow newly established petitioners one year to develop to a point that they can support the employment of aliens in primarily managerial or executive positions.

In creating the "new office" accommodation, the legacy Immigration and Naturalization Service (INS) recognized that the proposed definitions of manager and executive created an "anomaly" with respect to the opening of new offices in the United States since "foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition." 52 Fed. Reg. at 5740. The INS recognized that "small investors frequently find it necessary to become involved in operational activities" during a company's startup and that "business entities just starting up seldom have a large staff." *Id.* Despite the fact that an alien engaged in the start up of a new office may not be "primarily" employed in a managerial or executive capacity, as then required by regulation and later by statute, the INS amended the final regulations to allow for L classification of persons who are coming to the United States to open a new office as long as "it can be expected . . . that the new office will, within one year, support a managerial or executive position." *Id.*

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, CIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

It is important to note that, if a petitioner is unable to meet the requirements to extend an L-1A new office petition, this does not mean that the beneficiary can never be approved again for L-1A classification. While the petitioner may be ineligible for a second new office petition or a new office petition extension under 8 C.F.R. § 214.2(l)(3)(v)(C) and 8 C.F.R. § 214.2(l)(14), the petitioner may wait until it has been doing business in the United States for more than one year and then file a standard L-1A petition for new employment on behalf of the beneficiary. Under such a petition, however, the petitioner must show that it will employ the beneficiary in a managerial or executive capacity as required under sections 101(a)(44)(A) and (B) of the Act.

The AAO recognizes that the petitioner in the instant petition is a completely different legal entity from the petitioner in the original "new office" petition and in the subsequently denied extension petition. Nevertheless, the formation of "new" corporations or other legal entities by the foreign parent does not entitle

the foreign entity to multiple or subsequent "new office" L-1A visa approvals each with additional one-year validity periods. The vehicles through which the foreign entity chooses to enter the United States market, e.g., corporations, registered branch offices, limited liability companies, or other business organizations, are irrelevant to the analysis. The definition of "new office" in the regulations clearly emphasizes the United States activities of the entire organization and not just those of an individual United States petitioner. A "new office" is defined as an *organization* which has been doing business in the United States *through* a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). Therefore, once an organization submits a petition through a United States petitioner and seeks the admission of a beneficiary for a one-year period to open a "new office" in the United States, the organization may, after doing business for a one-year period through any number or combination of United States business organizations, petition to extend the validity of the petition.<sup>3</sup> If the "new office," regardless of the legal form of the petitioner, cannot demonstrate that the organization has been doing business in the United States through a business organization for the year prior to the filing of the petition in question, the petition must be denied.

In conclusion, the petitioner may not be granted a second petition under the more lenient "new office" provision even though the actual petitioner is a new entity separate and distinct from the original "new office" petitioner. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of a new office petition to support an executive or managerial position. There is no provision in CIS regulations that allows a petitioning corporation additional petitions under the "new office" regulatory accommodation for managers and executives. If the business is not sufficiently operational after one year, the petitioner, be it the same or a different legal entity, is ineligible by regulation for an extension of the previously approved L-1 petition.

In view of the above, the second issue in the present matter is whether the petitioner had been doing business for one year prior to the filing of the instant petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

As indicated above, the petitioner entered into a Management Agreement with KFSL Investments, Inc. on February 23, 2005 to operate and manage a hotel in Florida. Prior to this contract, the record is devoid of any evidence of regular, systematic, or continuous business activity. For example, the Form 1120 for the California corporation for the period October 27, 2003 through September 30, 2004, and the corporation's financial statement ending September 30, 2004, collectively indicate that the corporation had no revenue during that timeframe other than interest income, paid no salaries, and had no employees. Therefore, as there is no evidence of regular, systematic, and continuous business activity until February 23, 2005, the petitioner has not established that it had been doing business for one year prior to the filing of the instant petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). For this reason, the petition must be denied.

Beyond the decision of the director, an additional issue in the present matter is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

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<sup>3</sup>It is noted that, if the beneficiary changes United States employers during the validity period of the petition, then the petitioner is obligated to file an amended petition, unless the new employer is already a qualifying organization identified in an approved blanket petition. See 8 C.F.R. § 214.2(l)(7)(i)(C).

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner claims that it is 100% owned by the foreign entity. In support of this assertion, the petitioner has submitted, *inter alia*, articles of incorporation and a stock certificate purporting to issue 100 shares of stock to the foreign entity. However, upon review, it is clear that the articles of incorporation and stock certificate submitted by the petitioner have been altered. Under Florida law, an altered stock certificate remains enforceable only according to its original terms. *See Fla. Stat. § 678.2061 (2006)*. As the petitioner has not provided CIS with a copy of the unaltered, original stock certificate, it cannot be discerned what interest the stock certificate legitimately represents, if any. Therefore, as the petitioner has not established that the foreign entity owns and controls the petitioner through the issuance of stock, the petitioner has not established that it has a qualifying relationship with the foreign employer. For this additional reason, the petition may not be approved.

Moreover, in view of the altered organizational documents, the AAO questions the veracity of the petitioner's claim to have a qualifying relationship with the foreign entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's

enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:**

The appeal is dismissed.