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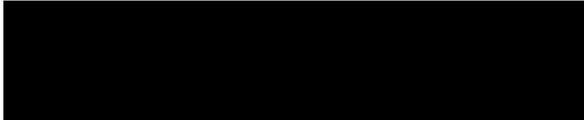
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 244 50224 Office: CALIFORNIA 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, California Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen or reconsider. The AAO will grant the petitioner's motion and affirm its previous decision.

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 California corporation that claims to be engaged in software development and marketing. It states that it is a branch of Samwoo Telecom Co. Ltd., located in Korea. The petitioner seeks to employ the beneficiary as the director of its new office in the United States for a three-year period.

The director denied the petition on January 5, 2004, concluding that the petitioner had failed to submit evidence that the U.S. company had secured sufficient physical premises to house the new office. The director noted that the lease agreement submitted in response to the petitioner's request for evidence was for an apartment intended solely for residential purposes.

The petitioner subsequently filed an appeal on January 30, 2004 and indicated on the Form I-290B, Notice of Appeal, that no brief and/or evidence were being submitted in support of the appeal. Although former counsel for the petitioner indicated that the petitioner "now occupies its own office, after use of home office," the AAO found no supporting documentary evidence attached to support this claim, and therefore summarily dismissed the appeal on February 21, 2006.

The petitioner timely filed the instant motion on March 22, 2006. On motion, counsel for the petitioner asserts that prior counsel mistakenly indicated on Form I-290B that no brief or evidence were being submitted in support of the appeal filed on January 30, 2004. Counsel asserts that former counsel did in fact submit extensive documentation in support of the appeal, including a commercial lease agreement for the U.S. company and photographs of its business premises. In support of the motion, the petitioner submits a declaration from former counsel, and additional documentary evidence pertaining to the petitioner's lease and ongoing business operations in the United States.

Upon review of the record, the AAO finds that the record does contain a copy of the commercial lease in question and original color photographs of the office secured by the petitioner. As it is not clear if these documents were inadvertently overlooked or whether they were incorporated into the record subsequent to the AAO's previous decision, the AAO will reopen the matter in order to reconsider the issue of whether the petitioner had secured sufficient physical premises to house its new office in the United States.

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.

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 regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, 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;
- (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 sole issue to be addressed in this matter is whether the petitioner has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

The nonimmigrant petition was filed on August 26, 2003. The petitioner indicated on Form I-129 that its office is located at [REDACTED]

On October 19, 2003, the director requested additional evidence, including evidence that sufficient physical premises to house the office had been secured. The petitioner noted that the evidence should include an official lease contract dated and signed by both lessor and lessee, and indicate the total square footage of the premises, including all office, production, manufacturing, and/or warehouse spaces.

In a response dated December 22, 2003, former counsel for the petitioner indicated that the company "started with home office," and "will move to other commercial office area after he [sic] hire more employees and get the approval of the beneficiary's L-1 Visa." The petitioner submitted a lease agreement for the above-referenced address, dated July 28, 2003, that indicates that the premises are to be used "solely as a private residence." The lease was between the beneficiary as tenant and Irvine Apartment Communities, L.P. The petitioner indicated that it intended to hire three employees during the first year of operations, including the beneficiary, but did not specifically describe the type or amount of space required to operate its business.

The director denied the petition on January 5, 2004, concluding that the petitioner did not establish that it had secured sufficient physical premises to house the new office. The director observed that the submitted lease was for an apartment intended solely as a residence, and which had not been zoned for any commercial purpose. The director determined that the premises were insufficient to operate the intended software and marketing business and to house the proposed employees.

In an appeal filed on January 30, 2004, former counsel for the petitioner stated on Form I-290B that the petitioner "now occupies its own office, after use of home office." As noted above, former counsel for the petitioner indicated on Form I-290B that he was not submitting a separate brief or evidence in support of the appeal, and the AAO found no supporting evidence attached to Form I-290B. Consequently, the AAO summarily dismissed the appeal on February 21, 2006.

Current counsel for the petitioner filed the instant motion to reopen or reconsider on March 22, 2006, asserting that prior counsel for the petitioner did in fact submit a commercial lease agreement and other evidence in support of the appeal, notwithstanding his statement on Form I-290B that no additional evidence was attached. As noted above, the AAO notes that the lease agreement in question and photographs of the office have been incorporated into the record of proceeding and will be considered herein.

The agreement submitted is a "license agreement" dated January 15, 2004, and is between the petitioning company and Premier Office Centers, LLC. The lease was for a six-month term commencing on January 21, 2004, and is for a 160 square foot office with a maximum capacity of three people. On motion, the petitioner submits evidence that the petitioner has continued to rent and occupy this office since January 21, 2004.

Upon review, the petitioner has not established that the petitioner had secured sufficient physical premises to house its new office at the time the petition was filed. The lease agreement submitted on appeal was signed subsequent to the director's denial of the petition, and nearly five months after the petition was filed. 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). Accordingly, the AAO need not and will not consider the lease agreement signed subsequent to the denial of the petition, or any other evidence related to the petitioner's current and ongoing business operations.

At the time of filing, the petitioner had not secured commercial space for the operation of its office and had no immediate intention of doing so. On appeal, 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). Accordingly, the previous decisions of the director and the AAO will be affirmed.

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, the petitioner has not met this burden.

ORDER: The AAO's prior decision, dated February 21, 2006, is affirmed.