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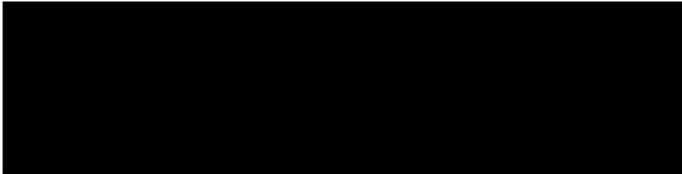
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

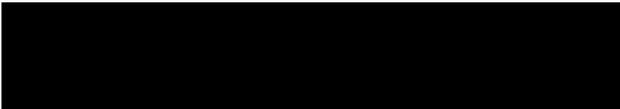
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FILE: SRC 06 071 51482 Office: TEXAS SERVICE CENTER Date: JUN 04 2007

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:

SELF-REPRESENTED

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 reject the appeal as untimely filed.<sup>1</sup>

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, a limited liability company organized in the State of Georgia, intends to operate a restaurant. The petitioner claims to have a qualifying relationship with the Rabahi group, located in Brazil. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States.

The director denied the petition concluding that the petitioner did not establish: (1) that the U.S. company had secured sufficient physical premises to house the new office; or (2) the size of the U.S. investment and the financial ability to commence business operations in the United States. The director observed that the petitioner provided no evidence that the U.S. company had signed a lease or received any funds from the foreign company.

On appeal, the petitioner states, in part, "we believe [the beneficiary] is eligible and met with L-1A visa qualifications." The petitioner notes that certain evidence requested by the director, including a lease agreement, business license, and bank account, was not obtainable because state authorities and banks request "legal immigration status and social security card." In October 2006, the petitioner supplemented the record with evidence that the petitioner signed a lease agreement and applied for a business license in September 2006. The petitioner provided additional documentary evidence in December 2006.

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.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal with the office where the unfavorable decision was made within 30 days after service of the decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

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<sup>1</sup> The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the Form G-28 is not an authorized representative.

The record indicates that the director issued the decision on April 26, 2006. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal, and instructed the petitioner to file the appeal with the Texas Service Center. The record shows that the Form I-290B was improperly submitted to the AAO on May 30, 2006 and returned to the petitioner on that date with instructions to file the appeal and filing fee with the Texas Service Center. According to the date stamp on the Form I-290B Notice of Appeal, it was received by U.S. Citizenship and Immigration Services (USCIS) as properly filed on June 6, 2006, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO. Review of the record indicates that the appeal does not meet the requirements of a motion to reopen or a motion to reconsider.

Further, the AAO notes that, had the appeal been timely filed, it would be summarily dismissed.

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.

The petitioner's statement that it believes the beneficiary meets the qualifications for an L-1A visa is insufficient to overcome the logical and well-founded conclusions reached by the director based on the evidence presented at the time of filing and in response to a request for additional evidence. 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)).

The petitioner does not dispute the director's conclusion that the petitioner did not have a lease agreement for physical premises from which to operate its business, nor does it address the issue of whether a financial investment has been made in the U.S. company. Therefore, the petitioner has not identified an erroneous conclusion of law or statement of fact for the appeal. While the AAO acknowledges receipt of an adequate lease agreement on appeal, the lease agreement was signed eight months subsequent to the filing of the petition. 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).

Although not addressed by the director, the record does not contain evidence that the U.S. entity and the beneficiary's claimed foreign employer are qualifying organizations as required by 8 C.F.R. § 214.2(l)(3)(i). The petitioner claims to be a subsidiary of the "Rabahi group" located in Brazil. The "group" appears to consist of a sole proprietorship owned by the beneficiary, a sole proprietorship owned by [REDACTED] and a partnership majority-owned by [REDACTED]. The petitioner claims that it is 100 percent owned by the beneficiary, [REDACTED] and [REDACTED]. The actual ownership of the U.S.

company has not been established, as the petitioner has not submitted the company's operating agreement or membership certificates. 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. at 165. As the appeal will be rejected, the AAO notes this deficiency for the record.

Further, the petitioner has not established that the beneficiary has one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(iii). The petitioner indicates that the beneficiary works for three different companies in the foreign entity's "group." However, as noted above, the group companies do not share common ownership as they are owned by three different individuals. Although the foreign entities appear to be part of a family-run business, this familial relationship does not constitute a qualifying relationship under the regulations. Even if it were established that the owner of one of the foreign entities is also the majority owner of the U.S. company, the beneficiary is employed on a part-time basis by three companies that must be considered un-related for immigration purposes. Based on the evidence presented, the beneficiary's employment abroad cannot be considered full-time employment with a qualifying organization. Again, this deficiency is noted for the record as the appeal will be rejected.

As the appeal was untimely filed, the appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

**ORDER:** The appeal is rejected.