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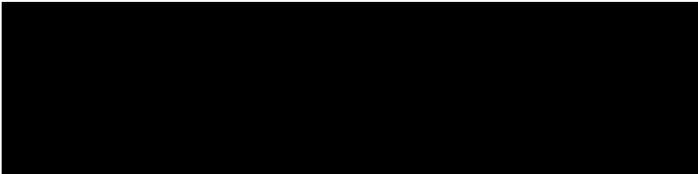


U.S. Citizenship
and Immigration
Services

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File: SRC 05 073 51547 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



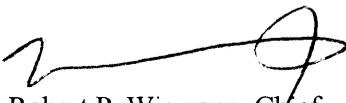
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 appeal will be dismissed.

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 Texas corporation that claims to be engaged in international services and the purchase and export of air conditioning parts. The petitioner states that it is a subsidiary of Compresores Rotativos Venezolanos, S.A., located in Venezuela. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a three-year period in L-1A classification to serve as its general manager.

The director denied the petition concluding that the petitioner did not establish: (1) that the United States company has secured sufficient physical premises to house the new office; or (2) that the foreign entity had provided funding or capitalization for the U.S. company.

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, the petitioner asserts that the U.S. entity has been operating from the beneficiary's residence since its formation in October 2004, although the written agreement for the arrangement was not signed until April 2005. The petitioner asserts that the foreign entity has made a significant investment in the U.S. company, but notes that current money transfer rules in Venezuela do not allow the direct transfer of funds from Venezuela to the United States. The foreign entity provides an explanation regarding the company's use of intermediaries to fund the petitioning company's U.S. operations. The petitioner submits a letter and additional documentary evidence in support of the appeal.

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 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 involves 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 first issue addressed by the director is whether the petitioner had secured sufficient physical premises to house the new office as of the date the petition was filed.

The nonimmigrant petition was filed on January 18, 2005. The petitioner stated on Form I-129 that the beneficiary would work at the following address: [REDACTED] The petitioner did not submit evidence that the U.S. company had leased or purchased property located at this address.

In a request for evidence dated February 23, 2005, the director requested evidence of the lease or purchase of facilities in which to conduct business in the United States.

In response, the petitioner submitted a commercial lease for the property located at the above-cited address, which identifies the petitioner as the lessor and the beneficiary as the lessee. The lease has a term of one year commencing on April 2, 2005, and states that the premises are to be used as an "import/export office." The lease agreement was executed on April 1, 2005.

The director denied the petition on December 1, 2005, concluding that the petitioner had failed to establish that the U.S. company had secured physical premises in which to conduct business as of the date the petition was filed. The director observed that the submitted lease agreement was not signed until several months after the filing of the petition.

On appeal, the petitioner asserts:

When the petition was presented, it was shown that they had purchased a location from where the business was running, then the company dedcided [sic] to type up a contract, but the property had been purchased and the company was occupying this same location since August 2004 and the occupational license had also been registered by the company to that address.

The petitioner also submits a letter, dated December 15, 2005, from the foreign entity's general manager, who states that the beneficiary "bought a house to be used as her primary residence at [REDACTED] FL on August 16, 2004." The foreign entity's general manager states that the petitioner has used the premises since October 2004 and has complied with the licensing and permits required by the municipality of Miramar, Florida.

In support of the appeal, the petitioner submits a closing statement and warranty deed confirming that the beneficiary and her spouse purchased a condominium located at the above-cited address on August 16, 2004. The petitioner also submits an occupational license for the U.S. business for the same address, valid from October 1, 2004 through September 30, 2005. The occupational license contains the following restrictions:

Mail & phone only
No employees at home
No work on premises
No clients at home
No deliveries to home
Home used for office only

Upon review, counsel's assertions are not persuasive. The petitioner has not established that it has secured sufficient physical premises to house its new office. While the evidence submitted on appeal shows that the beneficiary secured a U.S. residence prior to the filing of the petition, there is no evidence that the condominium is suitable for the petitioner to do business as an exporter or international legal services provider. As noted above, the occupational license for the premises prohibits employees or clients on the premises, deliveries, or any type of work, and appears to allow the petitioner to use the premises for receipt of mail and telephone calls only.

Furthermore, even if the secured space were properly zoned and licensed for the petitioner's full use, the AAO notes that the petitioner has not specifically outlined the type or amount of space required to operate its business, nor indicated how much of the residential space obtained would in fact be available for use by the U.S. company. 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)).

Based on the foregoing discussion, the petitioner has failed to establish that it secured sufficient physical premises to house the new office. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the U.S. company was funded at the time the petition was filed. When filing a petition for a beneficiary who is to be employed in a new office in a managerial or executive capacity, the petitioner is required to submit evidence to establish the size of the United States investment and the financial ability to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

The petitioner stated on Form I-129 that it is a majority-owned subsidiary of [REDACTED], a Venezuelan company. In support of the petition, the petitioner submitted copies of its Bank of America statements for the company's checking account for the months of October and November 2004. The two submitted bank statements show the following transactions: (1) a teller transfer in the amount of \$5,668.00 from [REDACTED] on October 12, 2004; (2) a wire transfer in the amount of \$16,000 on October 26, 2004, for which [REDACTED] is identified as the originator; (3) a "counter credit" in the amount of \$25,000 on November 12, 2004; and (4) a "counter credit" in the amount of \$6,600 on November 16, 2004.

In a request for evidence dated February 23, 2005, the director instructed the petitioner to submit evidence of the funding or capitalization of the U.S. company, including documentary evidence of wire transfers from the foreign company to the US. company. The director noted that the petitioner's bank statements list wire transfers, but did not indicate the originator of the funds.

In its response, the petitioner re-submitted its October and November 2004 bank statements, along with statements for the months of December 2004, January 2005, and February 2005. No additional wire transfers or other deposits appeared on the petitioner's subsequent bank statements. The petitioner stated that "the company is well based and it has enough funds deposited into the commercial account which will enable it to have a base with which to operate during the first year and will also enable it to purchase the parts ordered for export to the foreign company." The petitioner emphasized that the submitted bank statements "prove that the company has been capitalized for proper operation."

The director denied the petition on December 1, 2005, concluding that the petitioner failed to establish that the U.S. company has been funded by the foreign entity and has the financial ability to commence doing business in the United States. The director observed that the deposits indicated on the petitioner's bank statements do not show that the money was transferred from the foreign entity.

On appeal, the petitioner submits an elaborate explanation from the foreign entity's general manager, Jose [REDACTED] who addresses foreign exchange controls set in place by the Venezuelan government, and their effect on the foreign entity's methods of funding the U.S. petitioner. [REDACTED] explains that Venezuelan regulations prohibit the possibility of securing dollars for capital formation, "thus forcing the private sector to go to the "parallel market," via the Securities and Exchange Commission of Venezuela." [REDACTED] further explains:

Any private company who needs to exchange Bolivar's to dollars go to the parallel market. . . . In this particular case, our company in Venezuela, [REDACTED] go to a stock brokerage house in Venezuela (the intermediary), the intermediary proceed to buy American Depository

Receipts (ADR) in this particular example we buy "Public Debt Bonds issued by Venezuela and with the bonds we enter into a swap agreement in US Treasury Bills," after the previous operation is done we then proceed to authorize the intermediary (brokerage house) to sell the TBills in dollars and the dollars are wire transferred for credit to the account of [the petitioner]. The name of [REDACTED] will never show as the remitter of the funds. This above described clearly provide an explanation as to why in the bank statements of [the petitioner], the name of [REDACTED] as remitter of the funds will never show up, since the transfers of funds in a direct way are strictly forbidden by the Venezuelan government and the only way to do it is through the Stock and Bond Market of Venezuela and the Stock and Bond markets in New York.

The petitioner provides a "history of funds sent to [the petitioner] with funds originated and sent by [REDACTED] using the swap mechanism," and states that capital contributions made by the foreign entity between October 2004 and December 2005 totaled \$194,150.

Upon review, the petitioner's assertions are not persuasive. Preliminarily, the AAO notes that the record contains no business plan or other evidence detailing the anticipated start-up costs for the petitioning company. While it appears that the U.S. company had an account balance of approximately \$25,000 at the time of filing, without additional evidence, the AAO could not conclude that this amount was sufficient to allow the petitioner to commence doing business operations in the United States and move forward with its plan to expand to the point where it would realistically support an executive or managerial position within one year. 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)).

With respect to the evidence submitted on appeal, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The director specifically advised the petitioner that its bank statements were not sufficient to establish that the foreign entity had provided sufficient funding for the U.S. company, yet the petitioner simply re-submitted these documents in response to the director's request for additional evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in establishing that the beneficiary would be employed in a primarily managerial or executive capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner intends to hire the beneficiary as its general manager. The petitioner stated in its supporting letter that the U.S. company will purchase and export supplies and materials for use in the

foreign entity's manufacturing activities, as well as offer legal services for Venezuelans residing in the United States and other countries. The petitioner emphasized the beneficiary's legal background, and noted that she, along with the petitioner's proposed vice president, will "offer services such as divorces, power of attorneys, property sales and representation and other very delicate legal matters that require professional representation." The petitioner also attached a job description indicating that the beneficiary would "plan, direct and control the administrative, financial, information systems, and budgetary activities" of the company, advise management regarding commercial decisions, direct sales, buying new products, and collections, negotiate purchase of raw materials, and to ensure compliance with legal requirements.

In her request for evidence dated February 23, 2005, the director instructed the petitioner to submit a business proposal describing the beneficiary's proposed duties and the percentage of time she would spend on each duty, as well as information regarding the proposed staffing level by the end of the company's first year of operations, including position titles and duties for all proposed employees. In response, the petitioner provided a list of ten duties to be performed by the beneficiary, which included opening the company, seeking a location to open a warehouse, obtaining permits, consulting with the foreign entity on all decisions, setting an agenda, developing contracts, setting up accounts with financial institutions, and setting a budget. The petitioner stated that the beneficiary would hire a "sales manager-marketing director," a purchasing manager, and a warehouse supervisor and workers. The petitioner further stated that there should be four to five employees, and possibly up to eight employees, after one year of operations, and listed the following job titles: general manager, marketing director, administrator/operations manager, financial administrator/accounting manager, distributions director, warehouse supervisor, shipping and receiving, legal advisors and legal assistants.

Although requested by the director, the petitioner did not provide a clear timeline for the hiring of additional staff for the U.S. entity or job descriptions for the proposed employees, and thus it cannot be determined that the beneficiary would be relieved from performing the day-to-day operational duties of the company within one year. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Furthermore, the initial job description provided for the beneficiary suggested that she would be personally responsible for providing legal services to the petitioner's clients, rather than supervising others to do so. When a new business is 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 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 order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

Since the petitioner has not provided a business plan, it is impossible to determine if the petitioner can realistically be expected to launch and staff both its material purchase and export business and international services business within a one-year period. 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. Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity within one year. For this additional reason, the appeal will be dismissed.

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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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, that burden has not been met.

ORDER: The appeal is dismissed.