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FILE: EAC 07 039 50962 Office: VERMONT SERVICE CENTER Date: NOV 01 2007

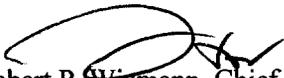
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER:
[Redacted]

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its manager to open a new office in the United States 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 allegedly engaged in the import/export business. Although the petitioner describes itself as [REDACTED] on the first line of #2, part 1, of the Form I-129, the record as a whole indicates that the United States employer, and the actual petitioner, is a Florida corporation called [REDACTED]. The name of the corporate employer appears on the third line of #2, part 1, of the Form I-129. [REDACTED] an individual, is an alleged owner of both the petitioner and the foreign employer. For purposes of this appeal, the AAO will consider [REDACTED] to be the petitioner.

The director, implicitly declining to treat the petitioner as a "new office," denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in primarily managerial or executive capacity.

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, *inter alia*, that the director should have applied the "new office" criteria to the instant petition.

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) states 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; 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)(1)(ii)(F) defines a "new office" as:

[A]n organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Moreover, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

[T]he 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.

A threshold issue in this matter is whether the director correctly declined to treat the petitioner as a "new office" in adjudicating the petition.

In this matter, the petitioner indicated in the Form I-129 that the beneficiary is coming to the United States to open a "new office." The petitioner repeated this claim in undated letters submitted with both the petition and in response to the director's Request for Evidence. Although the petitioner claims to have been in operation since 2001 in the Form I-129, this apparently applies to the foreign employer and not to the United States operation. As the record as a whole indicates that the petitioner has *not* been doing business in the United States, the director should have applied the "new office" criteria in 8 C.F.R. § 214.2(l)(3)(v) to the instant petition. Consequently, the petitioner was not obligated to establish that the beneficiary would be employed in a primarily managerial or executive capacity immediately upon her arrival in the United States, and the director's denial of the petition, which was based solely on this criterion, shall be withdrawn.

However, upon review, the petitioner has not submitted sufficient evidence to establish eligibility for the L-1A visa as a "new office." While not addressed by the director, the petitioner provided insufficient evidence to establish whether the beneficiary was employed abroad in a managerial or executive capacity. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Therefore, the director is directed to review the record, request pertinent additional evidence, and render a new decision after reviewing this evidence.

Furthermore, the petitioner has not submitted sufficient evidence to establish that sufficient physical premises to house the new office had been secured as of November 27, 2006, the petition's filing date, or that the United States operation, within one year of the approval of the petition, will support an executive or managerial position. The record is devoid of evidence credibly establishing the proposed nature of the office, the scope of the entity, its financial goals, and the size of the United States investment. 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)). Likewise, the director is directed to review the record, request pertinent additional evidence, and render a new decision after reviewing this evidence.

Finally, the petitioner has provided insufficient evidence to establish that it has a qualifying relationship with the foreign entity. The record does not clearly establish the ownership and control of the foreign entity. Also, according to the corporate records of the State of Florida, the petitioner was administratively dissolved on September 14, 2007. It is unclear how the petitioner will be "doing business" in the United States if it has lost its corporate privileges. In view of the above, the director is directed to review the record, request pertinent additional evidence regarding the ownership of the foreign entity and the petitioner's ability to conduct business in the United States, and render a new decision after reviewing this evidence.

For these additional reasons, the appeal may not be sustained, and the matter must be remanded to the director for further action.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.