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FILE: SRC 03 236 50411 Office: TEXAS SERVICE CENTER Date: **NOV 06 2007**

IN RE: Petitioner:  
Beneficiary:



PETITION: Petitioner 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:

Attached is a notice of intent to deny, pursuant to federal regulations at 8 C.F.R. § 103.2(a)(16) and 8 C.F.R. § 214.2(l)(8)(i). You have 33 days from the date of this notice to submit additional evidence in rebuttal to the proposed denial. All relevant rebuttal material will be considered in making a final decision.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The AAO initially rejected the petitioner's appeal as improperly filed pursuant to the regulations at 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1); and 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i). The matter is now before the AAO on motion, with a request that the appeal be re-opened. The AAO will re-open the petitioner's appeal. The director's decision will be withdrawn and the matter will be remanded to the director for further action and entry of a new decision.

The petitioner filed this nonimmigrant petition seeking to extend the employment of 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 in the State of Texas that claims to be operating a retail investment business. The petitioner claims that it is the subsidiary of Dynatech International (Pvt) Ltd., located in Lahore, Pakistan. The beneficiary was granted a one-year period of stay in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend his status.

The director denied the petition on February 25, 2004 on the grounds that the petitioner failed to establish: (1) that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity; (2) that the United States entity and the foreign entity are doing business as defined in the regulations; and (3) that the U.S. entity and the foreign entity have a qualifying relationship. In her decision, the director also concluded "the petitioner has willfully misrepresented a material fact in an attempt to obtain an immigration benefit," and "the petitioner has failed to provide full and truthful information."

On appeal, counsel disputes the director's findings and asserts that the evidence submitted demonstrates that the petitioner and the foreign entity are both doing business as defined in the regulations, that the two companies maintain a parent-subsidiary relationship, and that the beneficiary's position in the United States meets the criteria for both managerial and executive capacity. Counsel further notes that the officer's allegations that the petitioner willfully failed to provide full and truthful information is "horrifying and distressing" and that such conclusion was based on "sheer incompetence."

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)(14)(ii) also provides that 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.

As noted above, the director's decision included findings that the petitioner willfully misrepresented material facts and failed to provide full and truthful information requested by United States Citizenship and Immigration Services (USCIS). Upon preliminary review of the record of proceeding it is clear that the director erred by failing to provide notice of derogatory information that was unknown to the petitioner.

The regulation at 8 C.F.R. § 103.2(b)(16) states:

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered.

In addition, the regulation at 8 C.F.R. § 214.2(l)(8)(i) provides:

*Notice of Intent to Deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

The director's findings were clearly based, in part, on derogatory information of which the petitioner was never made aware. Specifically, the director's findings that the foreign entity was not doing business, and that the petitioner failed to maintain a qualifying relationship with the foreign entity, were not based on evidence submitted by the petitioner. Further, these issues were not addressed in a request for evidence or a notice of intent to deny prior to the denial of the petition. Denial of this petition cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director was obligated under these circumstances to notify the petitioner of the derogatory information and to issue a Notice of Intent to Deny.

In an effort to give the petitioner every opportunity to resolve the issues, the AAO will withdraw the director's decision and remand the petition to the director for further action and entry of a new decision. The director is instructed to issue to the petitioner a Notice of Intent to deny advising the petitioner of the adverse information known to the director.

The AAO further instructs that the Notice of Intent to Deny address all grounds for denial of the petition, including those based on the evidence of record, as the director's decision did not adequately articulate her basis for concluding that the beneficiary would not be employed in a managerial or executive capacity. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

**ORDER:** The decision of the director dated February 25, 2004, is withdrawn. The matter is remanded for further action consistent with the above discussion and entry of a new decision. Upon entry of the new decision, the director shall certify the decision to the AAO for review.