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File: WAC 06 038 50645 Office: CALIFORNIA SERVICE CENTER Date: SEP 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)

IN 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of 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, a corporation organized under the laws of the State of California, claims to be engaged in the business of construction and property development, and alleges a qualifying relationship with a partnership located in Israel.

The director denied the petition concluding that the petitioner failed to establish that sufficient physical premises to house the new office have been secured.

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 that the petitioner had submitted the incorrect lease with the petition and now seeks to submit the correct lease on 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.

In addition, 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, 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 primary issue in this proceeding is whether the petitioner has established that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of its petition, the petitioner submitted a copy of a lease dated June 21, 2005 for a "single family residence" located at [REDACTED]. The lease states in paragraph 5 that the "premises shall be used as a residence by the undersigned tenants with no more than 4 occupants, and for no other purpose, without written consent of the Owner." Also, the beneficiary is identified as the tenant, and the petitioner is not identified anywhere in the lease. Paragraph 11 prohibits assignment and subletting by the tenant. Finally, the petitioner submitted corporate organizational documents identifying [REDACTED] as the petitioner's registered office with the State of California as well as its principal office.

On January 12, 2006, the director requested additional evidence. The director requested, *inter alia*, a copy of the petitioner's floor plan, photographs of the petitioner's business premises, insurance information, and occupancy permit.

In its response to the Request for Evidence, the petitioner failed to provide any of the requested information regarding its business premises.

On May 19, 2006, the director denied the petition. The director determined that the petitioner failed to establish that sufficient physical premises to house the new office have been secured.

On appeal, counsel states the following in the Form I-290B: "The lease submitted by the Petitioner was [sic] for premises at [REDACTED] was mistakenly sent as it represents a residential premises used for the families of [the petitioner]." Counsel further explained that "the Premises for the Business Office of [the petitioner] is [REDACTED]. Counsel submitted a copy of the lease for [REDACTED] Avenue, which is identical to the lease submitted with the original petition, and, for the first time, a copy of the lease for [REDACTED]. Counsel also submitted, for the first time, photos of the purported office space utilized by the business.

Upon review, the petitioner's assertions are not persuasive.

As a threshold issue, counsel's assertions on appeal exhibit some confusion regarding what evidence was submitted in support of the initial petition. As evidence of its securing of physical premises, the petitioner submitted the lease for [REDACTED] with the initial petition. However, as stated in the Form I-290B on appeal, counsel appears to be under the impression that the petitioner had instead submitted the [REDACTED] with the initial petition and, consequently, had neglected to submit a copy of the [REDACTED] lease. This is incorrect. The [REDACTED] was first submitted on appeal and appears nowhere else in the record while the Sylmar Avenue lease was appended to the initial petition and was the basis for the director's decision. However, based on counsel's assertion on appeal that the petitioner's business premises are located at [REDACTED] the [REDACTED] appears to be irrelevant to these proceedings, and the proper lease to be scrutinized is the [REDACTED] the lease which was originally submitted. Therefore, the AAO will only consider the [REDACTED] lease in its adjudication of the instant appeal.<sup>1</sup>

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<sup>1</sup>It should be noted that counsel's submission of the [REDACTED] and the photographs of the purported business premises for the first time on appeal was inappropriate in this matter. First, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In this matter, the petitioner provided a lease for [REDACTED] in an attempt to establish that it had secured sufficient physical premises to house the new office. The petitioner cannot materially change its petition on appeal by offering an entirely new lease for a completely different physical location.

Second, given that the petitioner was put on notice in the Request for Evidence that its evidence regarding the securing of sufficient physical premises was inadequate, the petitioner may not supplement the record on appeal with additional evidence regarding this issue. The petitioner was put on notice of required evidence, e.g., photographs and floor plans, and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Upon review, the director properly concluded that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. In support of its petition, the petitioner provided a lease for [REDACTED]. As noted above, this a residential lease and is not a lease for commercial space. As explained in the lease, the premises may be used only as a residence by that tenant identified in the lease unless written consent is obtained from the landlord. The record does not contain any such written consent. Also, as explained above, the *beneficiary* is identified as the tenant. As paragraph 11 of the lease prohibits assignment and subletting by the tenant, the petitioner would not be permitted to occupy the premises even if it were "sufficient" for commercial use. In view of the above, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, and the petition may not be approved for that reason.

Moreover, as indicated above, the director specifically requested a floor plan and photographs for the physical premises in his Request for Evidence. The petitioner chose not to provide this 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). As the failure to provide this evidence precluded further inquiry into the sufficiency of the petitioner's physical premises, the petition shall also be denied for this reason.

Accordingly, the petitioner has failed to establish that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

Beyond the decision of the director, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive of managerial position as required by 8 C.F.R. § 214.2(l)(3)(v). The petitioner has failed to describe the scope of the entity or its organizational structure, to establish that the foreign entity has the financial ability to remunerate the beneficiary or to commence doing business in the United States, or to adequately describe the organizational structure of the foreign entity. The record is devoid of any evidence explaining what type of business the petitioner will be pursuing other than "construction and property development" or revealing the financial status or organization of the foreign entity. The petitioner did not provide a business plan or any evidence defining its proposed United States business activities.

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. In this matter, the petitioner has not provided this 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)).

Accordingly, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive of managerial position as required by 8 C.F.R. § 214.2(l)(3)(v), and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner did not establish that the petitioner and the organization which allegedly employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214.2(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The petitioner must also establish that the foreign entity is "doing business," which is defined in pertinent part in 8 C.F.R. § 214.2(l)(1)(ii)(H) as "the regular, systematic, and continuous provision of goods and/or services." *Id.* In the instant matter, the petitioner alleges that the individual owner of 100% of the petitioner's stock is the 50% owner of the foreign entity, a partnership, thus establishing, if true, that the two business organizations are affiliates.<sup>2</sup>

However, upon review, it has been determined that the petitioner has failed to establish (1) that the foreign entity is "doing business" as defined in the regulations; or (2) the ownership and control of the foreign entity. The record is devoid of any evidence that the foreign entity is actively doing business. The only evidence submitted by the petitioner is a translated "business permit" for the Israeli partnership from 2001 and an Israeli tax document from 2003. Neither of these documents establishes that the foreign entity is engaged in the regular, systematic, and continuous provision of goods and/or services. Moreover, neither document establishes the ownership or control of the foreign entity. While both the beneficiary and his brother are listed in the tax document, this document does not establish that they own or control the partnership under Israeli partnership law. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

Accordingly, the petitioner did not establish that the petitioner and the organization which allegedly employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214.2(l)(3)(i), and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary has been employed abroad for one continuous year within the three years preceding the filing of the petition or that this employment was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii)-(iv); 8 C.F.R. § 214.2(l)(3)(v)(B). The record is devoid of any evidence of the beneficiary's employment abroad or of his duties while employed by the foreign entity. Going on record without supporting documentary evidence is

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<sup>2</sup>It is noted that, in his response to the Request for Evidence dated April 3, 2006, counsel stated that the beneficiary, who allegedly owns the other half of the foreign partnership, had acquired a 50% ownership interest in the petitioner after the filing of the instant petition. As this change in ownership did not affect the ownership or control of the petitioner for purposes of this petition, this change need not be addressed.

not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The fact that the beneficiary is a "partner" in the foreign entity does not alone establish that he was employed or that his duties were primarily managerial or executive in nature.

Accordingly, the petitioner failed to establish that the beneficiary has been employed abroad for one continuous year within the three years preceding the filing of the petition, or that this employment was managerial or executive in nature, and the petition may not be approved for these additional reasons.

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 for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:**       The appeal is dismissed.