

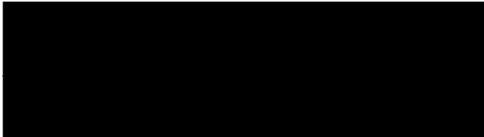


U.S. Citizenship
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File: SRC 06 114 50982 Office: TEXAS SERVICE CENTER Date: SEP 10 2007

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:

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 summarily dismissed.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its general manager as an L-1A nonimmigrant intracompany transferee to open a new office in the United States 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 and is allegedly a consulting business.

The director denied the petition concluding that the petitioner did not establish (1) that it has secured sufficient physical premises to house the new office; or (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position because the petitioner failed to establish that an investment had been made in the operation. Specifically, the director determined that, because the lease and bank documents submitted by the petitioner concern activity commencing after the filing of the petition, the petitioner failed to establish that physical premises had been secured and an investment had been made prior to the filing of the petition.

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 explains in a statement attached to the Form I-290B that it was unable to transfer money prior to the filing of the petition because it was "waiting to have all the [c]orporation documents done and the lease agreement signed" and because "it is a very complicated process to transfer money from [the c]ompany in Brazil." The petitioner also explained that "there was a delay in the rental process" because it did not have certain "financial documents" available and because it had difficulty finding available space in the desired area of Orlando, Florida.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed. While the petitioner gave explanations for its failure to secure sufficient physical premises and to establish that an investment had been made in the

United States operation, it nevertheless failed to identify an erroneous legal conclusion or factual statement in the director's decision for the AAO to consider on appeal. Consequently, the appeal must be dismissed.

That being said, the AAO notes that, upon review, the director's decision was appropriate.

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.

As indicated above, the petitioner failed to submit evidence that it had secured sufficient physical premises to house the new office, or that that an investment had been made in the operation, prior to the filing of the petition on February 27, 2006. 8 C.F.R. §§ 214.2(l)(3)(v)(A) and (C)(2). While the petitioner submitted a lease both dated and commencing June 15, 2006, and evidence that wire transfers were made to the petitioner commencing in April 2006, this evidence is not relevant to 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).

In the absence of required evidence, the petition may not be approved. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, the petitioner has failed to establish (1) that it has secured sufficient physical premises to house the new office; or (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position due to the petitioner's failure to establish that an investment had been made in the operation, and the petition may not be approved for these reasons.

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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.