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U.S. Citizenship  
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FILE: EAC 07 096 50282 Office: VERMONT SERVICE CENTER Date: **MAY 30 2008**

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

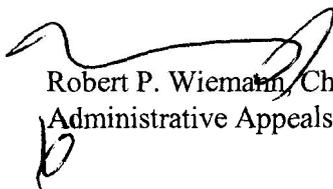
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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. Wieman, 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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to 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, a Florida corporation established in September 2006, states that it intends to engage in the import and export of diesel engines. It claims to be a subsidiary of Contratos, Ingenieria y Maquinaria Pesada Ltda (“Coninmaq Ltda”), located in Medellin, Colombia. The petitioner seeks to employ the beneficiary as the president and general manager of its new office in the United States for a one-year period.

The director denied the petition on September 4, 2007, concluding that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year of approval of the petition, or that the petitioning entity would support such a position within one year. The director observed that the petitioner had failed to provide a comprehensive description of the beneficiary's proposed duties sufficient to establish that the position would be primarily managerial or executive in nature. The director further noted that the petitioner had failed to provide requested information regarding specific duties to be performed by the beneficiary's proposed subordinates, and found the record insufficient to establish that the beneficiary would primarily supervise and control a subordinate staff of managerial, professional or supervisory personnel.

The petitioner subsequently filed an appeal on October 4, 2007. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. The petitioner submits the following statement on Form I-290B, Notice of Appeal or Motion:

We are appealing the decision based on the fact that the officer is not taking into consideration that this is a new entity, we were in the process of hiring people and invest in office space, etc., once the visa was apporved [sic], it seems the officer held us in a higher standard. He presumes that the workers “apparent” lack of college degree and in general presumes almost evrything [sic] since we have not start doing business and actually started the hiring process since we were waiting for the approval of the visa. We took evry [sic] step in order to have the visa approve [sic], secure premisses [sic] for the entity, set up the corporation, fund the company with enough money to start-up operations, etc.

The petitioner indicated that it would not be submitting a supplemental brief and/or evidence in support of its appeal.

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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's only objection to the denial of the petition is that the director failed to consider that the petitioning company is a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F). A review of the director's decision reveals that the director clearly cited to the regulatory definition of "new office," stated that the petitioner is considered a "new office" pursuant to this definition, and referenced the regulations at 8 C.F.R. § 214.2(l)(3)(v), which set forth specific evidentiary requirements for new office petitions.

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. If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* 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.

The director correctly determined that the petitioner had failed to provide a comprehensive description of the beneficiary's proposed duties as required by 8 C.F.R. § 214.2(l)(3)(ii). Although the petitioner indicated that the company would employ a marketing manager, a secretary, an administrative assistant, and three sales personnel, there was no evidence in the record to support a conclusion that such employees would be hired within one year of the approval of the petition. The record contains no detailed description of the beneficiary's proposed duties as president and general manager of the company, no business plan, hiring plan, or other evidence of the proposed nature of the office, the scope of the entity, its organizational structure, and its financial goals, and no evidence of the size of the U.S. investment or the financial ability to commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). 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)). It is impossible to conclude, based on the limited evidence submitted, that the beneficiary would be performing primarily managerial or executive duties within one year of the petition approval, or that the U.S. company would support a qualifying managerial or executive position. The petitioner has not submitted any evidence on appeal to overcome the director's grounds for denial of the petition.

Beyond the decision of the director, a related issue is whether the petitioner has established that it has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A). At the time the petition was filed on February 12, 2007, the petitioner indicated that the beneficiary would be working at 1435 Longarzo Place in West Palm Beach, Florida. The director subsequently requested, in a notice dated March 22, 2007, that the petitioner submit a complete copy of its commercial lease, complete with floor plan and photographs of the interior and exterior of the leased premises. In response, the petitioner submitted a commercial lease executed on February 20, 2007, with a commencement date of March 1, 2007. There is no evidence that the petitioner had a valid lease agreement in place or had secured physical premises to house its office at the time the petition was filed. 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). 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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. 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).

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

**ORDER:** The appeal is summarily dismissed.