U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D-7

[redacted]

FILE: WAC 00 095 51552 Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2004

IN RE: Petitioner: [redacted]
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)

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 case will be remanded for further consideration.

The petitioner claims to be engaged in the business of trade, wholesale, and retail. It seeks authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity. On appeal, counsel disputes the director's findings and submits additional evidence to support his assertions.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The U.S. petitioner states that it was established in 1999. The petition was filed in February of 2000.[1] The record indicates that the petitioner had been doing business for less than one year at the time the petition was filed and, therefore, would have been classified as a new office. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F).

The regulations at 8 C.F.R. § 214.2(l)(3)(v) state 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

[1] Although the director denied the petition in November 2000 and the petitioner filed the appeal in December 2000, the director inexplicably held the appeal for over two years. The record of proceeding was not forwarded to the AAO for review until February 2003.

(3) The organizational structure of the foreign entity.

The director determined that the initial evidence submitted by the petitioner did not establish eligibility and therefore issued a request for additional evidence. In regard to this issue, the director instructed the petitioner to submit a current organizational chart reflecting the petitioner's personnel structure at the time the request for evidence was issued. The director did not request any information about the beneficiary's prospective job duties or the petitioner's prospective organizational structure that would be in place after the petitioner's first year of operation in the United States. The petitioner complied with the director's request and submitted its "current" organizational chart. In the subsequent denial, the director analyzed the organizational chart and concluded that the petitioner failed to establish that "the nature of the petitioner's business would support three manager/executives." The director discussed the petitioner's current "minimal staff" in making the ultimate determination that the beneficiary would not be employed in a managerial or executive capacity. The director's analysis, however, was not accurate.

It is noted that 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 the instant case, the director failed to instruct the petitioner to submit evidence that would more accurately reflect the petitioner's organizational structure and the beneficiary's job duties at the end of the petitioner's first year of operation. Furthermore, evidence that the beneficiary's proposed employment will involve executive or managerial authority over the new operation is initial evidence, as specified in the regulations at 8 C.F.R. § 214.2(l)(3)(v)(B). Furthermore, the regulation at 8 C.F.R. § 103.2(b)(8) states that when the petitioner fails to submit initial evidence in support of the petition, CIS shall request that the petitioner submit the missing evidence and may request that the petitioner submit additional evidence. In the instant case, the director failed to request evidence regarding the beneficiary's prospective job duties or evidence regarding the petitioner's prospective organizational hierarchy. As such, the director did not have the proper information in order to draw any conclusions regarding the beneficiary's job duties. Accordingly, the case is hereby remanded so that the director may request the proper information. In addition, the director shall notify the petitioner that the evidence submitted initially does not establish that the foreign entity paid for its ownership interest in the petitioning entity. The director shall then examine the record in its entirety and make a new decision based upon her findings.

ORDER: The decision of the director, dated November 7, 2000, is hereby withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.