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

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U.S. Citizenship and Immigration Services

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FEB 23 2005

FILE: LIN 03 249 51813 Office: NEBRASKA SERVICE CENTERDate:

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

DISCUSSION: The Director, Nebraska 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 dismissed.

The petitioner is a new U.S. office incorporated in the State of Michigan, which provides design services of resin-based automotive components to automaker clients. The petitioner claims that it is a wholly-owned subsidiary of ITO Co. Ltd., located in Japan. It seeks to temporarily employ the beneficiary as an automotive components design engineer. Accordingly, the petitioner endeavors to classify the beneficiary as an L-1B specialized knowledge 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).

On September 10, 2003, the director denied the petition, concluding that (1) the evidence does not clearly establish that the petitioner has obtained sufficient physical premises to house the new office, and (2) there is no evidence that the petitioner has at that time the financial ability to remunerate the beneficiary and commence doing business in the United States.

On appeal, counsel for the petitioner asserts that sufficient premises have been secured for the petitioner's start-up staff. Counsel also asserts that the petitioner has the financial ability to conduct business in the U.S. and remunerate the beneficiary through the parent company. Counsel submits additional evidence in support of these assertions.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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)(iv) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or 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 business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) the petitioner has the ability to remunerate the beneficiary and to commence doing business in the United States.

The first issue in this proceeding is whether the petitioner has secured sufficient physical premises to house the new office.

As the director noted, in the initial submission, the petitioner indicated that it has entered into an office lease, but did not provide a copy of the lease or any other evidence relating to premises for the new office. On

August 26, 2003, the director requested further evidence that sufficient premises have been secured to house the new office. In response, counsel for the petitioner submitted (1) a copy of an office lease between the Northwestern Mutual Life Insurance Company as landlord and Nagase Plastics America Corporation as tenant for the building at [redacted] (2) a copy of a sublease between Nagase Plastics America Corporation as sublessor and the petitioner as sublessee for suite [redacted] of that building, for the period from May 1, 2003 through May 1, 2004; and (3) a copy of a consent to sublease by the Northwestern Mutual Life Insurance Company. The sublease indicates that the premise to be sublet to the petitioner consists of 250 square feet of space.

The director determined that, as the petitioner states that the office will initially be staffed by three engineers as well as locally hired administrative and support staff, it does not seem likely that the 250 square feet of space is sufficient, since it would not allow for adequate workspace for that many employees. Therefore, the director found, the evidence does not clearly establish that the petitioner has obtained sufficient physical premises to house the new office.

On appeal, counsel asserts that the space was sufficient for the company's *immediate* staffing needs, which counsel maintains consist of only the three engineers. Counsel further asserts that company's business plan shows that the hiring of additional personnel beyond the first three engineers would be completed in June 2005. Moreover, counsel states, based upon the petitioner's business relationship with the sublessor, more space will be made available as needed. In support of these assertions, counsel submitted additional evidence, including a floor plan of the sublet space and letter from the designer; an excerpt from the company's previously submitted business plan describing projections for hiring of staff; and a letter from the sublessor confirming that more space will be made available as needed.

The AAO will not consider the additional evidence submitted by counsel for the first time on appeal. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Therefore, the AAO will not consider the floor plan of the office space in question, or the letter from the sublessor, as both were submitted for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Based on the record of proceeding before the director, the AAO agrees with the director that the evidence is insufficient to support a conclusion that the petitioner has secured sufficient premises to house the new office. Counsel submits that the Citizenship and Immigration Services (CIS) "misinterpreted the business plan . . . believing that an administrative and support staff would be hired at the same time as the 3 engineers rather than 1 year later." However, the AAO notes that in the letter dated August 4, 2003 accompanying the petition, the petitioner states, "The company will be staffed in the fourth quarter of 2003, initially by three experienced [engineers] *and a locally hired administrative and support staff*" (emphasis added). Moreover, the excerpt setting forth the company's business plan from the same letter, which counsel resubmits on appeal, indicates that during the period from January through March 2004, the petitioner intends to "actively recruit local managerial staff members, including general manager and business development manager." The petitioner also states, one page later, that "[b]y January 2004 the hiring of managerial and business development personnel will be underway and completed within 3 months." All of these statements indicate that the petitioner plans to expand its staff considerably during the one-year lease of the 250-square-feet

space, which counsel himself represents as suitable for only the three engineers. In the absence of any other evidence that the petitioner has actually secured additional space for the staff it plans to hire during that year, the AAO finds the director properly concluded that the petitioner has not established that sufficient physical premises to house the new office have been secured at the time the petition was filed, and therefore has failed to meet the requirement set forth in 8 C.F.R. § 214.2(l)(3)(iv)(A).

The remaining issue in this proceeding is whether the petitioner currently has the financial ability to remunerate the beneficiary and commence doing business in the United States.

Along with the initial petition, the petitioner submitted its IRS Form 1120, U.S. Corporation Income Tax Return, for 2002, which indicates that the company's assets total $50,000. Based on a subscription agreement submitted at the same time, that amount appears to reflect the purchase of 50 shares of common stock of the company, at the price of $1,000 per share, by the foreign entity. The petitioner submitted no other information relating to its financial status. On August 26, 2003, the director requested further evidence that the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

In a letter responding to the request, counsel states that the petitioner has the ability to remunerate the beneficiary through the foreign entity. Counsel submitted the balance sheet and income statement of the foreign entity for the fiscal year from April 1, 2001 to March 31, 2002. These documents reveal no transfer of funds from the foreign entity to the U.S. entity, nor was any other evidence relating to any such transfer provided.

The director noted that the petition was filed seventeen months after the end of the fiscal year discussed in the financial statements submitted. Therefore, the director also denied the petition on the grounds that there is no evidence of the current financial status of either the petitioner or the foreign entity and no evidence that the petitioner currently has the financial ability to remunerate the beneficiary and commence doing business in the United States.

On appeal, counsel reiterates that the petitioner, through the parent company, has the ability to remunerate the beneficiary and conduct business in the U.S. Counsel concedes that the financial statement submitted in response to the director's request for further evidence was not sufficiently current to provide satisfactory evidence of financial viability. Counsel submits on appeal the financial statement of the foreign entity for the fiscal year from April 2002 through March 2003.

As previously noted, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Counsel gave no explanation as to why the additional evidence could not have been made available prior to the adjudication of the petition. Therefore, the AAO will not consider additional evidence submitted by counsel on appeal, and the appeal will be adjudicated based on the record of proceeding before the director. *See Matter of Soriano*, 19 I&N Dec. at 764. As previously noted, a failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Moreover, even if the more current financial statement of the foreign entity submitted on appeal were to be considered, the AAO notes that there is no indication in that document of any transfer of funds from the foreign entity to the U.S. entity for any purpose.

Based on the foregoing, the AAO agrees with the director's conclusion that the petitioner has not provided adequate documentation to establish that the U.S. entity has the financial ability to remunerate the beneficiary and commence doing business in the United States. The petitioner had indicated that the beneficiary would be remunerated at the rate of $75,000 per year. Based on the lease, the rent for the office space is $500 per month. Even without taking into account other operation costs that the petitioner has not enumerated in the petition and accompanying documentation, the U.S. entity's total assets of $50,000 is clearly insufficient for the beneficiary's salary and the cost of commencing business during the first start-up year. While counsel claims that the U.S. entity would be able to meet such financial requirement through the foreign entity, the record contains no evidence that the foreign entity has provided or would be providing necessary funding to the U.S. entity for such purpose. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, the AAO finds that the director properly concluded that the petitioner has failed to meet the requirement set forth in 8 C.F.R. § 214.2(l)(3)(iv)(C).

For the foregoing reasons, the appeal will be dismissed.

Beyond the decision of the director, the record does not contain sufficient documentation to persuade the AAO that the beneficiary has been or would be employed in a position that requires specialized knowledge, as required at section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15), or that the petitioner would support such a position within one year of approval of the petition.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of "automotive component design engineer" at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), aff'd, 905 F.2d 41 (2d. Cir. 1990).

For this additional reason, the appeal must be dismissed.

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. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.