U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

D7

[redacted]

FILE: SRC 02 041 52639 Office: TEXAS SERVICE CENTER Date: JUL 05 2005

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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, JAHI, Inc., states that it is a wholly-owned subsidiary of Arenas El Progreso, Ltda, located in Colombia. The petitioner was incorporated in the State of Florida on November 15, 2000 and plans to operate its business as a provider of construction materials. The petitioner seeks to hire the beneficiary as a new employee to open its U.S. office. Accordingly, in November 2001, the U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an executive or manager for three years. The petitioner endeavors to employ the beneficiary's services as the U.S. entity's General Manager at an annual salary of $30,000.

On May 30, 2002, the director denied the petition. The director determined that the petitioner did not have sufficient physical premises to house the new office.

On appeal, the petitioner's counsel states that the petitioner has sufficient physical premises to house the new business.

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 meet certain criteria. 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. 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.

Pursuant to 8 C.F.R. § 214.2(l)(3), 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.

Pursuant to 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates 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;

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

Initially, the petitioner did not submit a copy of the lease or photographs for the U.S. entity. Therefore, on January 9, 2002, the director requested that the petitioner submit a copy of the business lease or evidence of the purchase of facilities for the U.S. entity's business.

In response to the request for additional information, the petitioner submitted an October 31, 2001 lease for a twelve month term beginning on November 1, 2001 for the property at [redacted] although the document was labeled "Lease Commercial," the lease indicated that it was restricted to residential use only.

On May 30, 2002, the director denied the petition because the lease was restricted to residential use of the premises rather than commercial use of the premises. The lease stated:

USE OF PREMISES. The premises shall be used and occupied by Tenant exclusively as a private single family residence, and no part of it shall be used by Tenant at any time during the term of this lease for the purposes of carrying on

any business, profession, or trade of any kind, or for any other purpose other than as a private single family residence.

On appeal, the petitioner submits a "service agreement" and supporting documents. The document indicates that the agreement was made and entered into on June 18, 2002 for a term of three months and renewable monthly. The agreement is "Business Identity" services at [redacted] Florida 33181. The petitioner will pay $145 per month with no defined physical space allocated to the petitioner.

The petitioner states that the U.S. entity"has at this time sufficient physical premises to house the new office." However, 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). Therefore, at the time of filing on November 16, 2001, the petitioner did not have sufficient physical premises to house the new office.

In addition, the petitioner failed to establish sufficient physical premises to house the new office at the time of the director's request for additional information on January 8, 2002. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The petitioner was put on notice of the required evidence 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. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. In sum, the petitioner has not secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v). For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO finds that the beneficiary has not been employed in a managerial or executive capacity abroad as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44). As previously stated, to establish L-1 eligibility under section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L), the petitioner must submit evidence that within three years preceding the beneficiary's application for admission into the United States, the foreign organization employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. *Id.* On Form I-129, the petitioner stated that the beneficiary oversees the operation of the foreign entity. In addition, in an October 15, 2001 supporting letter, the petitioner stated that the beneficiary is responsible for increasing the sales of the company by identifying depressed markets, providing support for dealers, and acting as a liaison. However, the petitioner submitted a limited and vague description of the beneficiary's foreign duties. 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). In sum, the AAO is not persuaded that the beneficiary has been employed in a primarily managerial or executive capacity abroad. For this additional reason, the petition will not be approved.

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).

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 appeal will be dismissed.

ORDER: The appeal is dismissed.