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U.S. Citizenship and Immigration Services

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[redacted]

File: WAC 05 217 51399 Office: CALIFORNIA SERVICE CENTER Date: AUG 06 2007

IN RE: Petitioner:
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)

IN 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, Chief
Administrative Appeals Office

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its clinic administrator 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 is a sole proprietorship located in the State of California and is allegedly a dental practice. The petitioner claims a qualifying relationship with [redacted], the owner of the petitioner, doing business as "American Dental Clinic" in Santiago, Chile.

The director denied the petition concluding that the petitioner did not establish that the foreign employer is a "qualifying organization" because the petitioner failed to establish that the foreign employer is currently "doing business."

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 asserts that the record contains documentation that the foreign employer has been providing consulting services and is thus doing business.[1]

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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) states that 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.

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[1]It is noted that, on December 19, 2006, counsel to the petitioner confirmed by facsimile that no brief or evidence in addition to what was attached to the Form I-290B was submitted to the AAO, even though she indicated her intent to file a brief or additional evidence within 30 days on the Form I-290B. Therefore, the record shall be considered complete.

(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.

The primary issue in the present matter is whether the foreign entity is a "qualifying organization." 8 C.F.R. § 214.2(l)(3)(i).

Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing business" is defined as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(i)(l)(ii)(H).

The petitioner alleges that the foreign employer is "[redacted], d/b/a American Dental Clinic" having an address of "Tabancura 1091, Of. 225, Vaticura, Santiago, Chile." The record indicates that [redacted] is also the sole owner of the petitioner which is apparently a sole proprietorship. While the petitioner asserts that it and the foreign employer do not have "the same qualifying relationship as they did during the one-year period of the alien's employment with the company abroad," the petitioner does not attach a statement explaining this averment as required by the instructions to the Form I-129.

On September 14, 2005, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that the foreign employer is doing business.

In response, counsel to the petitioner provided evidence that [redacted] is certified to practice dental surgery in Chile; Chilean tax documentation for an entity called [redacted] Y Compania Limitada;" a letter from a Chilean accountant describing [redacted] Y Compania Limitada as a limited liability company and indicating that he provides services to this company in Chile; and a letter from a Chilean lawyer indicating that she represents [redacted] in Chile. The Chilean attorney makes references to [redacted]'s "asset holdings" in Chile.

On December 19, 2005, the director denied the petition. The director denied the petition concluding that the petitioner did not establish that the foreign employer is a "qualifying organization" because the petitioner failed to establish that the foreign employer is currently "doing business."

On appeal, the petitioner asserts that the record contains documentation that the foreign employer has been providing consulting services and is thus "doing business."

Upon review, the petitioner's assertions are not persuasive.

As a threshold matter, it must be noted that the foreign employer of the beneficiary, [redacted], d/b/a American Dental Clinic, appears to be, or to have been, a sole proprietorship. However, in response to the

Request for Evidence, the petitioner provided copies of tax documents regarding a Chilean company, [redacted] Y Compania Limitada. While the petitioner does indicate in the Form I-129 that it and the foreign employer do not have the same qualifying relationship as they did when the beneficiary worked abroad, the petitioner offers no evidence establishing that [redacted] owns or controls the Chilean limited liability company or that the original foreign employer has ceased doing business. Absent evidence connecting this organization with [redacted]'s ownership and control, and absent any explanation as to the current status of the original foreign employer, [redacted] Y Compania Limitada's tax and business records are irrelevant to these proceedings.

Regardless, even assuming that [redacted] Y Compania Limitada is owned and controlled by [redacted] or that the documents provided by the petitioner in response to the Request for Evidence are applicable to Dr. [redacted]'s business interests in Chile, the petitioner has not established that [redacted], or an entity owned or controlled by [redacted] is engaged in "the regular, systematic, and continuous provision of goods and/or services" abroad. As indicated above, the petitioner has provided letters and tax documents concerning Salcedo Y Compania Limitada and [redacted] assets in Chile. None of these documents establishes that Dr. [redacted], or a business entity owned and controlled by him, is "doing business." These documents indicate that [redacted] is licensed to perform dental surgery, that he and/or a business entity has filed tax returns, and that he has a relationship with a Chilean lawyer. There is no evidence regarding the provision of any good or service in a regular, systematic, and continuous fashion. Rather, it appears that, at most, [redacted] has a presence in Chile in the form of assets and professional contacts. This is not sufficient under the regulations.

Accordingly, the petitioner has failed to establish that the foreign entity is a "qualifying organization" because it has failed to establish that the foreign entity is "doing business," and the petition may not be approved for that reason. 8 C.F.R. § 214.2(l)(3)(i).

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary was employed full-time abroad for at least one continuous year with a qualifying organization within the three years preceding the filing of the instant petition. 8 C.F.R. § 214.2(l)(3)(iii). As indicated above, the petitioner has failed to establish that the foreign employer is, or has been, a qualifying organization. Consequently, the petitioner has also failed to establish that the beneficiary was ever employed by a qualifying organization.

The initial approval of an L-1A petition does not preclude Citizenship and Immigration Services (CIS) from denying an extension of the visa based on a reassessment of petitioner's qualifications. *See Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.