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FILE:



Office: TEXAS SERVICE CENTER

Date: JUN 02 2005

IN RE:

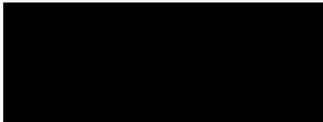
Petitioner:

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:



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, Texas 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 states that it is a computer services company that is also engaged in construction. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager. The director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary has been and will continue to be employed in a managerial or executive capacity.

On appeal, the petitioner's representative indicated on Form I-290B that it would submit a brief and/or additional evidence to address the director's denial within 30 days. Although the petitioner submitted a brief statement on the Form I-290B, it failed to adequately address the director's conclusions. In this brief statement, the petitioner states that the beneficiary was in fact functioning in a primarily managerial or executive capacity and alleges that the evidence submitted prior to adjudication clearly establishes that (1) one hundred percent of the beneficiary's duties are managerial and not those of a first line supervisor; (2) the beneficiary functions at a senior level within the company and consequently has the authority to hire and fire people; and (3) the beneficiary supervises other professionals and receives only general supervision from others. The petitioner concluded by stating that "[a]ll evidences [sic] will be submitted within 30 days due to the discrepancies given in this case." The petitioner's general objections on the Form I-290B, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. 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)).

On the Notice of Appeal, the petitioner clearly indicates that it would send a brief with the necessary evidence [to the AAO] within thirty days. According to 8 C.F.R. § 103.3(a)(2)(i), the petitioner "shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision," which in the case at hand would be no later than Wednesday, January 5, 2004. While the petitioner may request that it be granted additional time to submit an appeal, no such request was made in this case. *See* 8 C.F.R. § 103.3(a)(2)(vii). Even if additional time to submit a brief in support of the appeal had been requested and approved, to date there is no indication or evidence that the petitioner ever submitted a brief and/or evidence in support of the appeal with the Service or with the AAO.¹ As stated above, absent a clear statement, brief and/or evidence to the contrary, the petitioner does not identify, specifically, and erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. *See* 8 C.F.R. § 103.3(a)(1)(v).

¹ The AAO attempted to contact the petitioner's representative by telephone to verify whether a brief had been submitted, but found that the telephone number provided was no longer in service. While the AAO notes that the petitioner had problems receiving correspondence in this matter which in turn delayed the filing of the appeal, the fact remains that as of the date of this decision, nothing further has been received.

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.

In addition, the AAO notes several deficiencies in the record that were not address by the director. First, the minimal documentation of the parent's and the petitioner's business operations raises the issue of whether there is a qualifying relationship between the U.S. entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). Additionally, the ownership composition of the U.S. entity is unclear, since the stock certificate provided in the record is completed incorrectly and inconsistently. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. For this additional reason, the petition may not be approved.

In addition, the petitioner has not furnished a comprehensive description of its organizational structure or its physical space requirements. Furthermore, the office lease furnished in support of the petition indicates that the petitioner did not secure the premises until July 23, 2004, less than four months before the prior petition's expiration. Consequently, there is also a question of whether the petitioner was doing business during the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations 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 abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H). There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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 counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.