

identifying unauthorized persons to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D 7

FILE: EAC 03 048 52954 Office: VERMONT SERVICE CENTER Date: JUN 14 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 nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED] claims to be an affiliate of [REDACTED] located in Korea. The petitioner plans to operate a package design, confectionary wholesale, and import business. The U.S. entity was incorporated in the State of Massachusetts on October 30, 2002. The petitioner seeks to hire the beneficiary as a new employee to open its U.S. office. Accordingly, on December 3, 2002, 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 one year. The petitioner endeavors to employ the beneficiary as the U.S. entity's president.

On February 13, 2003, the director denied the petition. The director determined that the petitioner failed to establish that it had secured sufficient physical premises to house the new office.

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's counsel asserts that the petitioner previously provided sufficient evidence that it had secured physical premises to house the new office. Counsel submits additional evidence in support of this assertion.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, 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 with 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 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;

(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 pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A).

On December 3, 2002, the petitioner filed the Form I-129. In the initial filing, the petitioner submitted a copy of an agreement between the petitioner and [REDACTED] signed and dated on October 24, 2002. This license agreement indicated that the petitioner received "business access: identity plus" for three months, at a fixed \$175 fee for phone and mail services starting November 1, 2002 with a handwritten note stating "early move in of 10/24/02 TBS" written to the right of the typed starting date. In the space indicating the number of offices, "N/A" was written. The term and conditions stated, "as a client you have a license to use the office assigned to you. You also have shared use of common areas in the center." The buildings's address is indicated on the agreement as Framingham Center, [REDACTED].

On December 10, 2002, the director requested that the petitioner submit additional evidence regarding its physical premises. The director noted that the agreement that the petitioner submitted

was for "phone and mail services only, and did not include office space." The director requested a copy of the lease or deed to the petitioner's business premises and photographs of the interior and exterior of the premises.

In response, the petitioner submitted a January 23, 2003 letter signed by counsel. The petitioner did not submit any photographs of the premises. In the letter, counsel asserted:

[The petitioner] is in the beginning stage of starting up the U.S. operation, therefore [the petitioner] has made temporary arrangements with [REDACTED] to provide phone and mail services until an office is leased directly from [REDACTED]. A fully operational office will be established within the first quarter of 2003. Such rental of an office is contingent upon securing a visa that will allow the company to pursue its business plan after the principal of the U.S. operation obtains proper legal status. [REDACTED] is a reputable national company that leases out office space for start-up companies. [REDACTED] [REDACTED] has made a full lease proposal which will be executed as soon as an L visa is obtained.

On February 13, 2003, the director denied the petition. The director determined that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. The director found that there was no evidence that any physical space had been secured.

On appeal, counsel asserts, "On October 24, 2002, [the petitioner] entered into an agreement for an office space with a full-time office receptionist, voice mail, call forwarding services, and access to [REDACTED] administrative support staff." Counsel resubmits a copy of the first agreement, signed on October 24, 2002 and asserts that this agreement included "two hours of private usage per month, and any additional usage would be \$25 per hour." In addition, counsel submits a second and new agreement between the petitioner and [REDACTED], signed on February 26, 2003, to secure one office, number 119, at a fee of \$850 per month, for a term of six months commencing on February 24, 2003.

On review, the petitioner has failed to establish that it had secured sufficient physical premises to house the office as required by the regulations at 8 C.F.R. § 214.2(l)(3)(v)(A). Initially, the petitioner submitted a copy of an agreement between the petitioner and [REDACTED] signed and dated on October 24, 2002. This license agreement indicated that the petitioner received "business access: identity plus" for three months, at a fixed \$175 fee for phone and mail services starting November 1, 2002. There is also a handwritten note on the agreement stating that there was an "early move in of 10/24/02 TBS." Additionally, in the space indicating the number of offices, "N/A" was written. Therefore, there was no assigned office number and no indication that the petitioner received the "two hours of private usage per month" and if needed, the "additional usage" at "\$25 per hour" as claimed by counsel on appeal. There were also no photographs of the interior and exterior of the premises that clearly depicted the organization and operation of the entity as requested by the director.

In addition, although the petitioner resubmits the October 24, 2002 agreement on appeal, this agreement appears to have been altered. This agreement, unlike the one submitted previously, has

a hand written statement that indicates "2 hrs. private office usage per month." Although this hand written statement appears on the agreement submitted on appeal, the number of offices indicated is consistent with the previous agreement which stated "N/A." The language of the agreement's terms and conditions clearly indicated that, "as a client" the petitioner had "a license to use the office assigned" to it. However, there is no indication that an office had been assigned for the petitioner's use. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The AAO notes that the Form I-129 did not indicate that the beneficiary will be working at this office location. This center is located at Framingham Center, [REDACTED]. The Form I-129 and a supporting letter dated November 12, 2002 indicated that the petitioner's principal office is located at [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the petitioner's own admissions further substantiate that it had not secured a sufficient physical premises to house the new office. The petitioner asserted in its January 23, 2003 response to the director's request for additional evidence that it "has made temporary arrangements with [REDACTED] to provide phone and mail services until an office is leased directly from [REDACTED] and "[REDACTED] has made a full lease proposal which will be executed as soon as an L visa is obtained." These assertions clearly indicated that the petitioner had arranged only an unexecuted "full lease proposal" and had not established that it secured sufficient physical premises to operate its business. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements.

Further, on appeal, the petitioner submits a new lease describing the premises secured for the U.S. entity's operations. 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 December 3, 2002, the petitioner did not have sufficient physical premises to house the new office.

The petitioner also failed to establish sufficient physical premises to house the new office at the time of the director's request for additional information on December 10, 2002. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where the petitioner has been put on notice of a deficiency in the evidence, and has been given an opportunity to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should

have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

After careful consideration of the evidence, the petitioner did not establish that it had secured sufficient physical premises to house the new office. For this reason, the appeal will be dismissed.

The AAO notes that the petitioner submitted numerous documents that were translated. As required by the regulations at 8 C.F.R. § 103.2(b)(3), the petitioner must submit certified translations of these documents which the translator certified as complete and accurate, and by the translator's certification that he or she is competent to have translated from the foreign language into English. *See id.* However, the petitioner did not fully comply with the regulations. For example, a document "Certificate of the Financial Statements" indicated, "We hereby certify that attached financial statements are authentic copies of original statement filed with this office ones." The document indicated an issue date of June 5, 2001, the letter /S/, the words "Affirmed and Sealed," and the certified public account's name. There is no indication that the accountant is competent to translate from the foreign language into English. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Because the petitioner failed to submit certified translations of the foreign entity's financial documents and ownership records, the record contains insufficient evidence of the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In addition, the uncertified translations of the foreign entity's articles of incorporation are insufficient to establish that the petitioner has a qualifying relationship with the beneficiary's current employer as required by 8 C.F.R. § 214.2(l)(ii)(G). For these additional reasons, the petition may not be approved.

Beyond the decision of the director, the AAO finds that the petitioner failed to establish that the beneficiary has been employed in a qualifying managerial or executive capacity abroad as defined at section 101(a)(44) of the Act. As previously stated, to establish L-1 eligibility under section 101(a)(15)(L) of the Act, 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.* In a November 12, 2002 letter, the petitioner stated that the beneficiary "served in an executive and managerial capacity for both companies' international and business projects." No other description of the beneficiary's duties with the foreign entity was submitted. 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)). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). The regulations require the petitioner to submit a detailed description of the beneficiary's duties. *See* 8 C.F.R. § 214.2(i)(3). The petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity abroad. For this additional reason, the petition may not be approved.

Although not explicitly addressed in the decision, the record contains no documentation to persuade the AAO that the beneficiary has been or would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

Further, beyond the decision of the director, the petitioner indicated that the beneficiary is the "100% owner of [the petitioner] and the majority owner of [the foreign entity]." If this fact is established, it remains to be determined that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States. Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982); *see also* 8 C.F.R. § 214.2(l)(3)(vii). As the appeal will be dismissed on the grounds discussed, these issues need not be addressed further.

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 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.