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U.S. Citizenship
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File: WAC-04-195-51088 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

IN RE: Petitioner: [Redacted]
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:



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, 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 summarily dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ its President 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 corporation organized in the State of California that operates as an exporter of used clothing. The petitioner claims that it is the subsidiary of [REDACTED] (Shipping) Co., Ltd., located in Hiroshima, Japan. The beneficiary was initially granted a period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On the Form I-290B appeal, counsel for the petitioner states the following:

The beneficiary . . . had only 4 months to file for extension of [his] L1 . . . visa after obtaining [an] L1 . . . visa from [the] American Consul [REDACTED] Japan, because INS approved the petition only for 9 months until 7/30/2004. It is not fair for INS to deny the petition for extension on the ground [that] the beneficiary is not working in [a] managerial capacity within such a shortperiod [sic]. The petitioner should be allowed more time to start the business.

The petitioner submits a statement from the beneficiary as well as documentation of its business activity. Neither counsel nor the petitioner address the director's grounds for denial, or identify any erroneous conclusion of law or statement of fact for the appeal.

To establish 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 firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary 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.

Counsel suggests that the present petition should be adjudicated under the regulations governing new offices, provided in 8 C.F.R. § 214.2(l)(3)(v), as the beneficiary did not receive a full year in L-1A status. Counsel takes issue with the director's application of the regulatory requirements for new office extensions as provided in 8 C.F.R. § 214.2(l)(14)(ii). The initial new office petition (WAC-03-242-50221) was approved for a period from October 21, 2003 to July 30, 2004, 283 days. If a beneficiary is coming to the United States to open a new office, the petition may be approved for a period "not to exceed one year." 8 C.F.R. § 214.2(l)(7)(i)(3). There is no indication in the current record of whether the petitioner originally requested nine months or a full year. Regardless, any request for an extension of a petition that was originally approved as a new office must be evaluated under the criteria set forth at 8 C.F.R. § 214.2(l)(14)(ii).

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 support an executive or managerial position. 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. Based on the foregoing, counsel's argument is not persuasive and the director correctly applied the standard for new office extensions. *See* 8 C.F.R. § 214.2(l)(14)(ii).

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

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.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.