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U.S. Citizenship
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Services

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[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER Date: MAY 23 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:

[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, [REDACTED], states that it is a wholly owned subsidiary of [REDACTED], located in Venezuela. The petitioner plans to operate a business engaged in design, manufacture, and commercialization of electronic equipments, products, parts, and accessories. The U.S. entity was incorporated in the State of Florida on June 14, 2001. The petitioner seeks to hire the beneficiary as a new employee to open its U.S. office. Accordingly, in September 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's services as the U.S. entity's director of operations at an annual salary of \$36,000.

On December 31, 2002, the director denied the petition. The director determined that at the time of filing, the petitioner did not 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 beneficiary has secured a commercial premise and submits a lease agreement.

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 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, on September 13, 2002, the petitioner submitted a copy of a "virtual services" agreement with the Intelligent Office to establish that it had secured sufficient physical premises to house the new office. Consequently, on October 21, 2002, the director requested that the petitioner submit a copy of a lease agreement for the U.S. entity.

In response, the petitioner submitted a November 18, 2002 letter signed by counsel and another copy of the virtual services agreement with The Intelligent Office. The agreement is illegible and it is unclear if there is a legitimate agreement. In the November 18, 2002 letter, counsel asserted:

[The foreign entity] obtained a service agreement on behalf of [the beneficiary] with The Intelligent Office until such time as he is able to enter the United States and obtain adequate operational premises.

On December 31, 2002, the director denied the petition concluding that the petitioner had not secured sufficient physical premises to house the new office.

On appeal, the petitioner submits a new lease agreement and supporting documents. The lease indicates that the agreement was made and entered into on January 15, 2003 for a term of one year. The lease is for the office space at [REDACTED]. The petitioner will pay \$800 per month for 900 square feet of space.

On review, the petitioner has failed to establish that it has secured sufficient physical premises to house the office as required by the regulations at 8 C.F.R. § 214.2(l)(3)(v)(A). On appeal, the petitioner submits a new lease describing the premises to be secured for the U.S. entity's operations. Counsel states:

- At the time of filing the petition, [the beneficiary] was not present in the United States and unable to secure proper commercial premises.
- [The beneficiary] had the intention of waiting for the approval of L-1A in order to enter the U.S. in the proper status and commence operations.
- He arranged for a virtual office on a temporary basis until his proper entry as an L-1A intra-company transferee, to secure a proper business premise.
- Due to the existing situation in Venezuela, [the beneficiary] was unable, at the time of filing to be present in the United States. Because of the circumstances, [the beneficiary] decided to enter the United States and secure a proper commercial premise, as evidence by the enclosed Lease Agreement.

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 September 13, 2002, 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 October 21, 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. Consequently, the appeal will be dismissed.

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.* On Form I-129 and in an August 14, 2002 letter, the petitioner stated that the beneficiary "works for the foreign entity as general manager from 1976 until present." In addition, in the September 4, 2002 letter, the petitioner stated that the beneficiary "has been the president and general manager for the past twenty-five years of the foreign entity" and stated that Exhibit I described the beneficiary's position abroad. However, Exhibit I and several other Exhibits are written in Spanish. The regulation at 8 C.F.R. § 103.2(b)(3) requires, in pertinent part, that "any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." *Id.* 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)). In sum, based on the minimal evidence provided, 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.

In addition, the record contains insufficient evidence: describing the scope of the U.S. entity, its organizational structure and its financial goals; or showing the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, as required by 8 C.F.R. § 214.2(1)(3)(v). As noted above, most of the documents describing the foreign entity were submitted without certified English translations and will have no evidentiary weight. *See* 8 C.F.R. § 103.2(b)(3). The petitioner has therefore failed to establish that the U.S. entity will support a managerial or executive position within one year. For this additional reason, the petition may 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* [REDACTED] 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.