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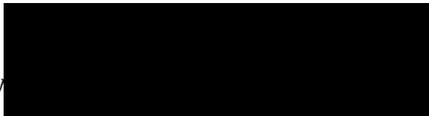
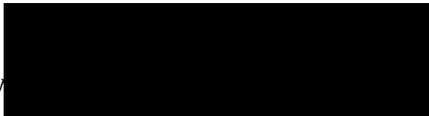
U.S. Citizenship
and Immigration
Services

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DN

File: SRC 03 087 53105 Office: TEXAS SERVICE CENTER Date: **OCT 11 2005**

IN RE: Petitioner: 
Beneficiary: 

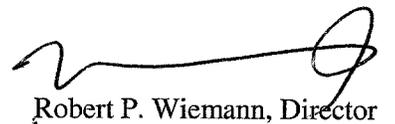
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas 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 petition seeking to extend the employment of 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 Tennessee corporation that operates a gas station and retail convenience store. The petitioner claims that it is an affiliate of [REDACTED] located in [REDACTED] United Arab Emirates. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for three years.

The director denied the petition concluding that the petitioner did not establish that the U.S. company was doing business pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H).

On appeal, counsel for the petitioner submitted sufficient evidence to clearly establish that the petitioner has been doing business as defined in the regulations. Counsel asserts that the director's decision involved an incorrect application of the law, or, alternatively, was based on an incomplete review of the documentation submitted. Counsel notes that the director's decision refers to the receipt number for another petition or application and suggests that the director may have confused the facts of this case with those of another matter.

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.
- (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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The primary issue in this matter is whether the petitioner has been doing business for the year preceding the filing of this petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as "the regular, systematic, and continuous 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."

The petition was submitted on February 3, 2003. In support of the petition, the petitioner submitted: (1) evidence that the petitioning company purchased an existing business, a gas station and convenience store, on or about May 2, 2003; (2) copies of 26 IRS Forms W-2, Wage and Tax Statement, for 2002; (3) IRS Form 940-EZ, Employer's Annual Federal Unemployment Tax Return for 2002; (4) IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last three quarters of 2002; (5) Tennessee Department of Revenue State and Local Sales and Use Tax Return for May 2002; (6) city and county license and tax reports reflecting business taxes paid throughout 2002; (7) the petitioner's bank statements for May through December 2002; (8) copies of recent invoices for goods purchased for sale in the petitioner's store; and (9) invoices for telephone service, waste removal service, and a store security system.

The petitioner issued a request for evidence on June 13, 2003, in part instructing the petitioner to submit evidence of business conducted during the past year, such as sales contracts, invoices, bills of lading, shipping receipts, orders, and U.S. Customs forms.

In a response received on September 5, 2003, the petitioner submitted additional invoices for gasoline and grocery purchases and copies of previously submitted documents evidencing purchases made, and evidence of sales and business taxes paid by the petitioner since May 2002.

On December 2, 2003, the director denied the petition, concluding that the petitioner had not established that it was doing business for the previous year. Specifically, the director determined: "The documentary evidence submitted has established that the petitioner has been engaged merely in the purchasing of goods and services."

On appeal, counsel for the petitioner asserts that the director overlooked the evidence submitted to establish that the petitioner is doing business, misapplied the law to the facts of this case, or confused the facts of this case with another matter.¹ Counsel asserts that the petitioner acquired an existing business in May 2002 and has been engaged in the regular, systematic, and continuous provision of goods and services since that time.

Upon review, the director's determination that the petitioner was merely purchasing goods will be withdrawn. The petitioner has submitted sufficient evidence to establish that the U.S. entity was doing business at the time of filing as defined at 8 C.F.R. § 214.2(l)(1)(ii)(H). Although the director noted that the petitioner had only provided evidence that it purchased inventory, it is reasonable to assume that the petitioner has regularly purchased gasoline and merchandise for its store because it is, in fact, replenishing goods that were sold in the regular course of doing business.

However, the petitioner is required to establish that it has been doing business for the previous year, since the approval of the initial petition authorizing the beneficiary to open a new office. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). In this case, the beneficiary was granted a one-year period of stay in L-1A status commencing on February 6, 2002. Although the director requested evidence that the petitioner was doing business for the previous year, the petitioner did not document any business activity prior to the purchase of the gas station and convenience store on or about May 2, 2002. The petitioner has submitted no evidence that it was doing business during the months of February, March, and April 2002. Accordingly, the petitioner has not established that it was doing business for the previous year. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. The petitioner has provided only a vague job description for the beneficiary that fails to convey an understanding of what types of duties he will perform on a daily basis. For example, the petitioner indicated in an attachment to Form I-129 that the beneficiary devotes a total of 30 percent of his time to "overseeing preparation of sales and inventory reports" and "reviewing financial reports," yet failed to identify who actually prepares the reports, if not the beneficiary. The petitioner stated that the beneficiary devotes twenty percent of his time to "establishing and implementing policies to manage and achieve market goals," but did not further describe the beneficiary's policies or goals. The beneficiary is described as allocating an additional 30 percent of his time

¹ Counsel notes that the director's decision refers to receipt number SRC 03 087 53108 rather than SRC 03 087 53105. This error, while regrettable, appears to be merely typographical in nature. The record of proceeding is complete and in order, and there is no reason for the AAO to suspect that the director mistakenly considered evidence submitted with another matter in reaching her determination.

to “managing the company,” and “maintaining and keeping good relations with the customers in addition to the vendors.” Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *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 petitioner's job description for the beneficiary does not allow the AAO to determine the duties performed by the beneficiary, such that they could be classified as managerial or executive.

The regulation at 8 C.F.R. 214.2(l)(14)(ii)(D) also requires the petitioner to submit a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity. In support of the initial petition, the petitioner indicated that it employed eight workers and the petitioner submitted its Tennessee Department of Labor and Workforce Development Premium Report for the fourth quarter of 2002, which shows that the petitioner paid wages to eight employees, including the beneficiary. The beneficiary and two other employees received wages commensurate with full-time employment, while the remaining five employees earned between \$150 and \$1200 during the three-month period. In her June 13, 2003 request for evidence, the director instructed the petitioner to provide a copy of its organizational chart. In response, the petitioner submitted a chart depicting the beneficiary as “executive manager/president,” a morning shift manager, an evening shift manager, two cashiers, a cashier/helper, and four individuals identified as “cashier/stoker.” None of the employees named on the organizational chart appear on the petitioner's quarterly report for the fourth quarter of 2002. Accordingly, the AAO cannot determine what positions were filled at the time the petition was filed, whether the beneficiary supervised any supervisory or professional employees, or whether the subordinate staff, which was comprised primarily of part-time employees working between three and 18 hours per week, was sufficient to relieve the beneficiary from performing non-qualifying first-line supervisory and/or operational duties.

Based on the petitioner's failure to provide a comprehensive description of the beneficiary's duties or a consistent description of its staffing at the time the petition was filed, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this additional reason, the petition will 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 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. 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.

ORDER: The appeal is dismissed.