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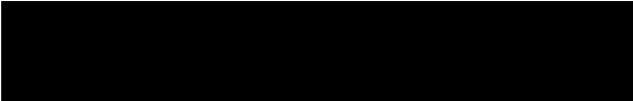
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PUBLIC COPY



FILE: WAC 04 129 52848 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2006

IN RE: Petitioner:
Beneficiary:



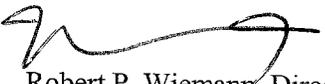
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

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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 appeal will be summarily dismissed.

The petitioner, an Australian corporation, seeks to transfer the beneficiary temporarily to the United States to be employed as the chief executive officer of its United States subsidiary, 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 and its subsidiary, a Colorado corporation, claim to be engaged in hardware and software development and sales. The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a managerial or executive capacity.

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 the Form I-290B Notice of Appeal, counsel for the petitioner asserts:

We respectfully request that you reconsider this application as a "new office" and grant the petitioner a one year initial period of stay. While you correctly note that the U.S. company was incorporated in 2002, it has not been acting as an independent entity, and all financial functions have been performed by the parent company, which prevented the submission of any United States payroll or tax forms. The U.S. Company was waiting to commence operations independently until the arrival of the beneficiary so that the beneficiary could supervise and manage operations. We intend to submit additional evidence that the beneficiary supervises a subordinate staff who will relieve him of performing non-qualifying duties, by submitting Form 1099's or other payroll evidence that the employees are in fact employed by the U.S. Company, thus meeting the burden of proof set forth in the Director's explanation for the denial.

Counsel indicated on Form I-290B that she would submit a brief or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on November 14, 2005 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel replied on November 16, 2005, indicating that she did not file a brief or evidence in support of this appeal. Accordingly, the record is now complete.

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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Rather than specifically identifying any erroneous conclusion of law or statements of fact on appeal, counsel requests that the petition be reconsidered as a "new office" petition pursuant to the regulations at 8 C.F.R. § 214.2(l)(3)(v). On the L Classification Supplement to Form I-129, the petitioner indicated that the beneficiary is not coming to the United States to open a new office. Furthermore, the petitioner did not submit the required supporting evidence for a new office petition. Counsel's request to amend the petition on appeal is not properly before the AAO, and counsel's request that the petitioner be considered a "new office" as defined at 8 C.F.R. § 214.2(l)(ii)(F) will not be granted. If the petitioner now believes that it meets the definition of a "new office" for purposes of this visa classification, the petitioner must file a new petition, with appropriate supporting documentation, rather than seek approval of a petition that is not supported by the facts in the record.

Counsel also claimed that the petitioner would be able to provide Forms 1099 or other documentary evidence to substantiate the petitioner's claim that the United States entity had four employees at the time the petition was filed. As noted above, this evidence has not been 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)). Furthermore, the director previously requested that the petitioner provide evidence of wages paid the U.S. entity's employees and the petitioner failed to submit documentary evidence in response. 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). The petitioner has not submitted any evidence on appeal to overcome the director's conclusion that the beneficiary would not be employed in a managerial or executive capacity in the United States.

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 the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.