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FILE: SRC 02 137 50105 Office: TEXAS SERVICE CENTER

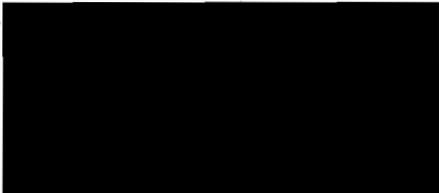
Date: JUL 27 2006

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, Chief  
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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its engineering manager 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 under the laws of the State of Florida and is engaged in the import, service and lease of amusement machines. The petitioner claims that it is the affiliate of [REDACTED] located in Sao Paulo, Brazil. 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.

The director denied the petition concluding that (1) the petitioner did not establish that a qualifying relationship still existed between the United States employer and foreign entity; (2) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (3) the petitioner did not establish that the United States company or the foreign company was doing business. In addition, the director found that the petitioner's failure to submit any of the requested evidence, thereby precluding a material line of inquiry, is grounds for denying the petition.

On appeal, the petitioner fails to address the director's conclusions. Instead, the petitioner's counsel asserts the following:

We did not present all of the requested information such as the tax returns, staffing level, etc. because the company was in the process of deciding to wind up the business and have the beneficiary return to Brazil. Accordingly we presented a letter from the foreign affiliate requesting an extension – only until January 15, 2003 – to give the beneficiary time to wind up the business and to allow the company in Brazil time to obtain a re-import license from Brazilian customs so that the machinery which has been imported from the company in Brazil to the U.S. affiliate could be returned to Brazil.

On appeal, counsel also requested a short extension to allow the beneficiary's daughter to finish the semester in school. The appeal included a company brochure and pictures of the machines in the warehouse which need to be returned to Brazil.

Despite these concerns, based on the minimal documentation in the record, it cannot be determined that the petitioner has established that the beneficiary will be in a position of managerial or executive capacity, that the United States entity and the entity in Brazil continue to have a qualifying relationship, and that the U.S. entity and foreign entity are doing business. 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)).

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 establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the

petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of 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." 8 C.F.R. § 214.2(l)(1)(ii). 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. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. As previously noted, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied any of the enumerated evidentiary requirements. The petitioner has not submitted evidence that the United States and foreign entities are still qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner has not submitted evidence that the United States entity has been doing business for the previous year as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner has not submitted a detailed statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition so that the AAO can determine whether the beneficiary is employed in a primarily managerial or executive capacity. The petitioner has not submitted a statement describing the staffing of the new operation. Finally, the petitioner has not submitted evidence of the financial status of the United States operation. For all of these reasons, the petition may not be approved and the appeal will be dismissed.

In addition, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 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. *See* 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. *See* 8 C.F.R. § 103.2(b)(14). The director sent a request for evidence on June 8, 2002 and the petitioner subsequently submitted a response that failed to include any of the requested materials.

The petitioner's request for an extension in order to wind up the company does not specifically identify any errors on the part of the director or provide new evidence to support that the petitioner qualifies for an L-1 extension on behalf of the beneficiary. The appeal is simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. 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. at 165.

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.

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 counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.